

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 15

[Docket No. FR-4292-P-01]

RIN 2501-AC51

Revision of Freedom of Information Act Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's Freedom of Information Act (FOIA) regulations in their entirety. The rule would implement the amendments made by the Electronic Freedom of Information Act to FOIA. The proposed rule would also rewrite the FOIA regulations using plain language. Plain language is an approach to writing that promotes responsive, accessible, and understandable written communication. The rule would also make various streamlining and organizational changes to the regulations. These proposed amendments would simplify and improve the clarity of the HUD's FOIA requirements.

DATES: *Comments Due Date:* Submit comments on or before September 8, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Comments should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Marylea Byrd, Assistant General Counsel, FOIA Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500, Room 10248; Telephone (202) 708-3866 (this is not a toll-free number.) Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD's regulations at 24 CFR part 15 describe the policies and procedures

governing public access to HUD records under the Freedom of Information Act (FOIA) (5 U.S.C. 552). Enacted in 1966, FOIA gives persons the right to request and receive a wide range of information from any Federal agency, subject to certain exemptions. As stated by President Clinton in his October 4, 1993 memorandum to the heads of all Federal departments and agencies, FOIA "was enacted based upon the fundamental principle that an informed citizenry is essential to the democratic process and that the more the American people know about their government the better they will be governed."

The Congress has amended FOIA several times, most recently in 1996 with the enactment of the Electronic Freedom of Information Act (Public Law 104-231, approved October 2, 1996; 110 Stat. 3048) (EFOIA). The 1996 amendments were designed to improve public access to government information and records, particularly electronic records, and expedite agency responses to requests for records under FOIA.

This proposed rule would revise HUD's FOIA regulations in their entirety in order to: (1) Implement the statutory amendments made by the Electronic Freedom of Information Act to FOIA; and (2) simplify and improve the clarity of HUD's freedom of information requirements. The following sections of this preamble summarize the major changes that would be made by this proposed rule to HUD's FOIA regulations.

II. Implementation of Electronic FOIA Amendments

As noted above, EFOIA made various amendments designed to enhance public access to agency records and agency processing of FOIA requests. The following is a summary of the major amendments made by EFOIA that would be implemented by this proposed rule.

Electronic Access to Information

EFOIA improves the ability of a requester to obtain information in an electronic format by requiring agencies to provide information in the format preferred by a requester, and by requiring agencies to provide more information on-line. This proposed rule would make several amendments designed to implement the EFOIA electronic information requirements. The following is a summary of the most significant of these amendments:

1. *Information available in electronic format.* Section 15.101 of this proposed rule describes HUD's overall policy concerning disclosing identifiable

records. (This information is currently located in § 15.3.) This section has been revised to implement the EFOIA requirement that readily reproducible records be made available in the format requested, including an electronic format (5 U.S.C. 552(a)(3)(B)).

2. *Electronic Reading Room.* EFOIA requires that agencies make information available over "electronic reading rooms" on the internet (5 U.S.C. 552(a)(2)(E)). Section 15.102 of this proposed rule specifies where the public may inspect and copy the documents that HUD is required to make readily available under section 552(a)(2) of FOIA. (This information is included in current § 15.12.) HUD has reading rooms in Headquarters in Washington, DC and in each of the Secretary's Representative's offices listed in Appendix A to this document. This section has been amended to include the internet address of HUD's "FOIA electronic reading room," which contains on-line access to HUD records. The proposed rule would also provide that requesters may use HUD's internet web site for submitting FOIA requests for records that are located in HUD Headquarters.

Enhanced FOIA Processing Procedures

EFOIA also modifies the deadlines and procedures for processing FOIA requests to provide faster processing for some requests, and to assist agencies to reduce backlogs and delays. This proposed rule would make various amendments to implement these enhanced FOIA processing procedures. The following is a summary of the most significant of these amendments:

1. *Multitrack processing.* EFOIA permits agencies to implement multitrack FOIA processing systems, based on the amount of work or time (or both) involved in processing FOIA requests (5 U.S.C. 552(a)(6)(D)). Under the first-come, first-served process used by agencies, FOIA requesters with simple requests could experience lengthy delays in the processing of their requests if the agency is handling a previous FOIA request involving voluminous records. Multitrack processing is designed to mitigate this problem.

Section 15.105 of this proposed rule explains how HUD will process FOIA requests. The proposed rule would provide for multitrack processing at § 15.105(a). Specifically, this proposed rule sets out a two track system: (1) A complex track, and (2) a routine track.

When HUD has a significant number of pending requests that prevents a responsive determination being made within 20 working days, the requests

will be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests. Factors HUD will consider in assigning a request to the simple or complex track will include whether the request involves the processing of voluminous documents and/or whether the request involves responsive documents from three or more HUD organizational units. Unless HUD determines the request is complex, HUD will place each request into the "routine track." Within each of these tracks, HUD will process the requests on a first-in, first-out basis.

2. *Expedited processing.* EFOIA requires that agencies promulgate regulations authorizing expedited processing of FOIA requests for records if the requester demonstrates a "compelling need" for a speedy response (5 U.S.C. 552(a)(6)(E)). Section 15.105(b) of this proposed rule provides for expedited processing of FOIA requests. The proposed rule provides that HUD will consider a compelling need to exist if:

- The failure of a requester to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or a threatened loss of substantial due process rights; or
- If the requester is primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

3. *Changes in time periods for processing FOIA requests.* EFOIA amended the time periods for agency processing of FOIA requests. Specifically, EFOIA expanded the amount of time an agency has to provide an initial response to a FOIA request from ten working days to 20 working days (5 U.S.C. 552(a)(6)(A)). In unusual circumstances, the agency may extend this time period by an additional ten days (5 U.S.C. 552(a)(6)(B)(i)). If the additional time needed is more than 10 working days, the agency must offer the requester an opportunity to limit the scope of the request so that the agency may process it within the extra 10 working day period (5 U.S.C. 552(a)(6)(B)(ii)).

EFOIA defines "unusual circumstances" to include the need to:

- Search for, collect, and appropriately examine a voluminous amount of records;
- Search for and collect the records from other offices than the one handling the request; and
- Consult with another government office having a substantial interest in the

determination of the FOIA request. (5 U.S.C 552(a)(6)(B)(iii).)

This proposed rule would implement the statutory amendments to the time period for responding to FOIA requests at § 15.104.

III. Clarifying Changes

In addition to implementing the statutory amendments made by EFOIA, this proposed rule would make several amendments to simplify and improve the clarity of HUD's freedom of information requirements. The following is a summary of the major clarifying changes that would be made by this rule:

Plain Language

This rule would rewrite the FOIA regulations using plain language, in response to President Clinton's Memorandum of June 1, 1998, entitled "Plain Language in Government" (63 FR 31885, Wednesday, June 10, 1998). In this memorandum, President Clinton directed Federal agencies to use plain language in all government writing. With respect to rules, President Clinton directed Federal agencies to use plain language in new proposed and final rules beginning January 1, 1999. In the same memorandum, President Clinton also urged Federal agencies to consider rewriting existing regulations in plain language, as resources permit.

Plain language is an approach to writing that promotes responsive, accessible, and understandable written communications. It involves the use of a number of writing tools to create documents that are visually inviting, logically organized, and understandable on the first reading. These writing tools include:

- Using the active voice and strong verbs;
- Using compact sentences;
- Using personal pronouns such as "you" and "we";
- Using common, everyday words;
- Avoiding surplus words and technical or legal jargon;
- Using tables to present information where appropriate; and
- Using a design and layout that increases comprehension.

HUD selected to rewrite the FOIA regulations in plain language, because it is important that the requirements governing the public's access to HUD records be simple to understand.

Streamlining and Organizational Changes

In addition to rewriting HUD's FOIA regulations in plain language, this proposed rule would also make various streamlining and organizational changes

to 24 CFR part 15. The following is a brief summary of the major streamlining changes that would be made by this proposed rule:

1. *Consolidation of FOIA regulations.* Currently, HUD's FOIA regulations are located in seven separate subparts of 24 CFR part 15 (subparts A through C, E through G, and J). This proposed rule would simplify HUD's freedom of information requirements by consolidating them in subpart B of 24 CFR part 15.

Existing 24 CFR part 15, subparts H and I are not FOIA-related. Current subpart H, which describes the procedures HUD follows in responding to subpoenas or demands of courts and other agencies to produce or disclose documents, would be redesignated as subpart C. Current subpart I, which describes the procedures HUD follows concerning the testimony of its employees in legal proceedings, would be redesignated as subpart D. With the exceptions of the changes in designation and conforming amendments, these regulations would not be revised by this proposed rule.

2. *Removal of repetitive statutory language.* As part of the overall simplification of the FOIA regulations, HUD would remove codified language which simply restates statutory provisions. For example, this proposed rule does not include a section comparable to § 15.11 of the current rule, which simply restates section 552(1) of FOIA. Section 552(1) identifies the matters that HUD must publish in the **Federal Register**. Nor does the proposed rule restate the statutory exemptions in section 552(b) of FOIA currently contained in § 15.21(a).

3. *Clarification of FOIA request procedures.* Section 15.103 of the proposed rule describes the information that must be included in a FOIA request. The proposed rule would provide more instruction on what should be included in a request than does the current rule (see § 15.41 of the current rule). Among other clarifications, the proposed rule would ask the requester to specify a fee amount above which HUD and the requester would consult before the requester agrees to pay the fee. Proposed § 15.103 also seeks information concerning multitracking and expedited processing (see section II of this preamble).

4. *Time limits regarding fee payments.* Section 15.106 of the proposed rule would also add time limits on conferring about reformulating a request to reduce the fee and on paying or committing to pay a fee. Proposed § 15.106 would also provide that HUD can consider a FOIA request withdrawn

if the requester fails to respond within the specified period. HUD believes that this clarification is needed to avoid delays to other requesters that might otherwise occur because of the first-in, first-out policy.

IV. Findings and Certifications

Environmental Impact

This proposed rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321). The proposed revision of the FOIA-related provisions of 24 CFR part 15 falls within the exclusion provided by 24 CFR 50.19(c)(1), in that it does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule before publication and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule is procedural. Accordingly, the proposed rule would not have any impact on the substantive rights or duties of small entities requesting HUD records under the Freedom of Information Act. Furthermore, the fees charged under this rule are limited by FOIA to direct costs of searching for, reviewing, and duplicating the records processed for requesters and are not economically significant.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have

federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

List of Subjects in 24 CFR Part 15

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 15 as follows:

PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES

1. Revise the heading of part 15 to read as set forth above.
2. The authority citation for part 15 is revised to read as follows:

Authority: 42 U.S.C. 3535(d).

Subpart A also issued under 5 U.S.C. 552.

Section 15.107 also issued under E.O. 12958, 60 FR 19825, 3 CFR Comp., p. 333.

Subparts C and D also issued under 5 U.S.C. 301.

3. Revise subpart A to read as follows:

Subpart A—Purpose and Policy

Sec.

15.1 What is the purpose of this part?

15.2 What definitions apply to this part?

§ 15.1 What is the purpose of this part?

(a) *Subpart B of this part.* Subpart B of this part describes the procedures by which HUD makes documents available under the Freedom of Information Act (FOIA) (5 U.S.C. 552). Subpart A of this part applies to all HUD organizational units; however, applicability of subpart A to the Office of the Inspector General is subject to parts 2002 and 2004 of the title.

(b) *Subpart C of this part.* Subpart C of this part describes the procedures HUD follows in responding to subpoenas or demands of courts and other agencies to produce or disclose documents.

(c) *Subpart D of this part.* Subpart D of this part describes the procedures

HUD follows concerning the testimony of its employees in legal proceedings.

(d) *Inapplicability of subparts B and C to Office of Inspector General.*

Subparts B and C of this part do not apply to employees in the Office of the Inspector General. The procedures that apply to employees in the Office the Inspector General are described in part 2004 of this title.

§ 15.2 What definitions apply to this part?

The following definitions apply to this part.

(a) *Terms defined in part 5 of this title.* The terms HUD, Secretary, and Organizational unit are defined in part 5 of this title.

(b) *Other terms used in this part.* As used in this part:

Business information means commercial or financial information provided to HUD by a submitter that arguably is protected from disclosure under Exemption 4 (42 U.S.C. 552(b)(4)) of FOIA.

Duplication means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

Educational institution means:

- (i) A preschool;
- (ii) A public or private elementary or secondary school;
- (iii) An institution of graduate higher education;
- (iv) An institution of undergraduate higher education
- (v) An institution of professional education; or
- (vi) An institution of vocational education, that primarily (or solely) operates a program or programs of scholarly research.

Employee of the Department means a current or former officer or employee of the United States appointed by or subject to the supervision of the Secretary, but does not include an officer or employee covered by part 2004 of this title.

FOIA means the Freedom of Information Act (5 U.S.C. 552).

Legal proceeding includes any proceeding before a court of law or other authority, i.e., administrative board or commission, hearing officer, arbitrator or other body conducting a quasi-judicial or legislative proceeding.

Legal proceeding in which the United States is a party means any legal proceeding including as a named party the United States, the Department of Housing and Urban Development, or

any other Federal executive or administrative agency or department, or any official thereof in his official capacity.

Legal proceeding among private litigants means any legal proceeding in which the United States is not a party.

News means information that is about current events or that would be of current interest to the public.

Person means person as defined in 5 U.S.C. 551(2). It includes corporations and organizations as well as individuals.

Review means the process of examining a document located in response to a request to determine whether any portion of it may be withheld, excising portions to be withheld, and otherwise preparing the document for release. Review time includes time HUD spends considering any formal objection to disclosure made by a submitter under § 15.108. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search includes all time spent looking manually or by automated means for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

Submitter means any person or entity who provides business information, directly or indirectly, to HUD. The term includes, but is not limited to, corporations, State governments, and foreign governments.

4. Revise subpart B to read as follows:

Subpart B—FOIA Disclosure of Information

Sec.

- 15.101 What is HUD's overall policy concerning disclosing identifiable records?
- 15.102 Where and when may I inspect and copy records that FOIA requires HUD to make regularly available to the public?
- 15.103 How can I get other records from HUD?
- 15.104 What are the time periods for HUD to respond to my request for records?
- 15.105 How will HUD process my request?
- 15.106 How will HUD respond to my request?
- 15.107 How does HUD handle requests that involve classified records?
- 15.108 What are HUD's policies concerning designating confidential commercial or financial information under Exemption 4 of the FOIA and responding to requests for business information?
- 15.109 How will HUD respond to a request for information from Form HUD-92410 (Statement of Profit and Loss)?
- 15.110 What fees will HUD charge?
- 15.111 How do I appeal a denial of my request for records or a fee determination?

15.112 How will HUD respond to my appeal?

15.101 What is HUD's overall policy concerning disclosing identifiable records?

HUD will fully and responsibly disclose its identifiable records and information consistent with competing public interests concerning the national security, personal privacy, agency deliberative process, and obligations of confidentiality as are recognized by FOIA. HUD will make a record available in the form or format requested, if the record is readily reproducible in that format.

§ 15.102 Where and when may I inspect and copy records that FOIA requires HUD to make regularly available to the public?

(a) You may inspect and copy records, including indices of the records, that section 552(a)(2) of FOIA requires HUD make available to the public at HUD's reading rooms. HUD has reading rooms in Headquarters in Washington, DC and in each of the Secretary's Representative's offices. These reading rooms are open during the business hours for the HUD office in which they are located.

(b) This information is also available to you through HUD's Internet web site at <http://www.hud.gov>.

§ 15.103 How can I get other records from HUD?

(a) *Generally.* You may submit a written request for copies of records in person or by mail.

(b) *Records located in a HUD field office.* If you are submitting a request for records located in a HUD field office, you should deliver or mail your request to the FOIA Liaison in each HUD Field Office.

(c) *Records located in HUD headquarters.* If you are submitting a request for records located in HUD Headquarters, you should deliver or mail your request to the FOIA Division, Office of the General Counsel. You may also use the FOIA electronic request form on HUD's Internet web site at <http://www.hud.gov>.

(d) *What should I include in my FOIA request?* In your FOIA request you should:

(1) Clearly state that you are making a FOIA request. Although Federal agencies are required to process all requests for documents as Freedom of Information Act requests, whether or not specifically designated as FOIA requests, failure to clearly state that you are making a FOIA request could unduly delay the initial handling of your correspondence through HUD's FOIA processing;

(2) Reasonably describe the records you seek. Include information that you may know about the documents you are requesting;

(3) Indicate the form or format in which you would like the record made available;

(4) State your agreement to pay the fee. You may specify a dollar amount above which you want HUD to consult with you before you will agree to pay the fee;

(5) Indicate the fee category that you believe applies to you (see § 15.110);

(6) If you are making a request on behalf of another person for information about that person, include a document signed by that person authorizing you to request the information on his or her behalf; and

(7) If you are requesting expedited processing, include your certification setting out the facts you believe show that there is a compelling need (see § 15.104(d)) to expedite processing of your request.

§ 15.104 What are the time periods for HUD to respond to my request for records?

(a) *What time limits generally apply?* If you have met the fee requirements of § 15.110, HUD, in general, will respond within 20 working days after the correct office receives your request. If you have sent your request to the wrong office, that office will send it to the correct office within 10 working days and will send you an acknowledgment letter.

(b) *What time limits apply to requests made on behalf of another person?* The time limits described in paragraph (a) of this section also apply to requests you make on behalf of another person for information about that person. However, the time limits will not commence to run until HUD's receipt of the document signed by that person authorizing you to request information on his or her behalf. If you make your request on behalf of another person without including such signed authorization, HUD will inform you of the authorization needed.

(c) *What time limits apply in unusual circumstances?* If you have requested an especially large number of records, the records are not located in the office handling the request, or HUD needs to consult with another government office, HUD will notify you that extra time is required. If the extra time needed is more than 10 working days beyond the general time limit set out in paragraph (a) of this section, HUD will offer you any opportunity to limit the scope of your request so that HUD may process it within the extra 10 working day period.

(d) *What time limits apply to my request for expedited processing?* If you

requested expedited processing, HUD will notify you within 10 working days after it receives your request whether it will grant expediting processing.

§ 15.105 How will HUD process my request?

(a) *Multitracking.* HUD places each request in one of two tracks. HUD places requests in its simple or complex track based on the amount of work and time involved in processing the request. Factors HUD will consider in assigning a request in the simple or complex track will include whether the request involves the processing of voluminous documents and/or whether the request involves responsive documents from three or more organizational units. Within each track, HUD processes requests in the order in which they are received.

(b) *Expedited processing.* HUD may take your request or appeal out of normal order if HUD determines that you have a compelling need for the records. If HUD grants your request for expedited processing, HUD will give your request priority and will process it as soon as practicable. HUD will consider a compelling need to exist if:

(1) Your failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or a threatened loss of substantial due process rights; or

(2) You are primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

§ 15.106 How will HUD respond to my request?

(a) *Who will respond to my request?*

(1) The FOIA Division of the Office of General Counsel in HUD Headquarters and the FOIA liaisons in each HUD Field Office are authorized to release copies of any HUD records unless disclosure is clearly not appropriate under FOIA.

(2) The FOIA Division in HUD Headquarters and the FOIA liaisons in each HUD Field Office may deny a request for a record in accordance with the provisions of FOIA and this part.

(b) *What type of a response will I receive?* Within the time limit described in § 15.103, HUD will either:

(1) Agree to give you all the records you requested;

(2) Advise you that HUD will not give you some or all of the records you requested. Any denial or partial denial of a requested record must be concurred in by the FOIA Division in Headquarters, by counsel in the Field

Offices, or by counsel in HUD's Departmental Enforcement Center Satellite Offices. In this case, HUD will:

(i) Explain why it has decided not to comply fully with your request, citing specific exemptions where applicable;

(ii) Describe the records denied or, if there are fewer than 21 records denied, list them specifically;

(iii) Estimate the volume of the records denied unless doing so would harm a protected interest; and

(iv) Explain how to appeal that decision, and provide the name and address of the HUD official to whom you should submit your appeal.

(3) Tell you that HUD's estimate of the fee is more than you have agreed to pay and ask to confer within 10 days to see if you can reformulate your request so that HUD can meet your request at a fee that is acceptable to you; or

(4) Tell you that you will not receive a response until you have either paid your fee or committed to the amount of fee you will pay, as applicable, and will provide you 10 days to pay, or commit to pay, the fee.

(5) If you requested expedited processing, advise you whether your request is granted or denied and, if your request is denied, advise you of your right to appeal.

(c) *What action may HUD take if I fail to respond?* If you fail to respond within a period specified in this subpart, HUD may consider your request for records withdrawn and may terminate processing of your request.

§ 15.107 How does HUD handle requests that involve classified records?

If your request involves the release of documents that are classified under Executive Order 12958, HUD will refer your request and the pertinent documents to the originating agency for processing. HUD may refuse to confirm or deny the existence of the requested information if the originating agency determines that the fact of its existence is itself classified.

§ 15.108 What are HUD's policies concerning designating confidential commercial or financial information under Exemption 4 of the FOIA and responding to requests for business information?

(a) *HUD's general policy concerning business information which may be considered as confidential commercial or financial information.* Except as provided in this section or otherwise required by law, HUD officers and employees may not disclose business information which is considered as confidential commercial or financial information to anyone other than to HUD officers or employees who are

properly entitled to the information to perform their official duties.

(b) *How does a submitter make a claim that business information is confidential commercial or financial information?* (1) If you are a submitter, you may request confidential treatment of business information at the time the information is submitted to HUD or within a reasonable time after it is submitted.

(2) To obtain a designation of confidentiality, you must:

(i) Support your request with an authorized statement or a certification giving the facts and the legal justification for your request and stating that the information has not been made public; and

(ii) Clearly designate the information that you consider confidential.

(3) Your designation of confidentiality will expire 10 years after the date the information was submitted to HUD, unless you have provided a reasonable explanation for a later expiration date.

(c) *How will HUD respond to a request for business information?* If the information requested has been designated in good faith by the submitter as information to be protected under 5 U.S.C. 552(b)(4) ("Exemption 4") or if HUD has reason to believe that the information may be protected by Exemption 4, HUD shall:

(1) Unless an exception in paragraph (c)(2) of this section applies, promptly notify the submitter about the request or the administrative appeal and give the submitter 10 working days to submit a written objection to disclosure. HUD will describe the requested business information or will provide copies of all or a portion of the records;

(2) If any of the following circumstances apply, HUD will not notify the submitter:

(i) HUD determines that the information should not be disclosed;

(ii) The information has been published lawfully or has been made available officially to the public;

(3) A law other than FOIA requires HUD to disclose the information;

(4) A HUD regulation requires HUD to disclose the information. The regulation must:

(i) Have been adopted pursuant to notice and public comment; and

(ii) Specify narrow classes of records submitted to HUD that are to be released under the FOIA.

(d) *Notice to requester.* At the same time HUD notifies the submitter, HUD will also notify the requester that the request is subject to the provisions of this section and that the submitter is being afforded an opportunity to object to disclosure of the information.

(e) *Opportunity to object to disclosure.* If the submitter timely objects to disclosure, HUD will consider the submitter's objections, but will not be bound by them. HUD generally will not consider conclusory statements that particular information would be useful to competitors or would impair sales, or other similar statements, sufficient to justify confidential treatment. Information provided by a submitter or its designee may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* If after considering the submitter's objections, HUD decides to disclose business information over the objection of a submitter, HUD will send a written notice of intent to disclose to both the submitter and the requester. HUD will send these notices at least 10 working days before the specified disclosure date. The notices will include:

- (1) A statement of the reasons why HUD rejected the submitter's disclosure objections;
 - (2) A description of the business information to be disclosed; and
 - (3) A disclosure date.
- (g) *What other policies apply to a submitter?* (1) *HUD notice of FOIA lawsuit.* HUD will promptly notify the submitter of any suit to compel HUD to disclose business information.

(2) *Determination of confidentiality.* HUD will not determine the validity of any request for confidentiality until HUD receives a request for disclosure of the information.

(3) *Current mailing address for the submitter.* Each submitter must give HUD a mailing address for receipt of any notices under this section, and must notify HUD of any change of address.

§ 15.109 How will HUD respond to a request for information from Form HUD-92410 (Statement of Profit and Loss)?

(a) *To whom will HUD disclose the information?* HUD will release information from Form HUD-92410 (or a HUD approved substitute form that the mortgagor may have submitted) only to eligible potential purchasers and only during the period specified by HUD for the mortgage sale.

(b) *Under what conditions will HUD release such information?* HUD will release the information only if all of the following three conditions are met:

- (1) The information concerns a project that is subject to a HUD-held mortgage which HUD is selling under the authority of sections 207 (k) and (l) of the National Housing Act (12 U.S.C. 1713 (k) and (l)) or section 7(i)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)(3)).
- (2) The eligible potential purchasers have agreed to:

- (i) Keep the information confidential;
- (ii) Disclose the information only to potential investors in the mortgage and only for the period specified by HUD for the mortgage sale and to notify those potential purchasers of their obligations under this section;

- (iii) Use the information only to evaluate the mortgage in connection with the mortgage sale; and

- (iv) To follow disclosure procedures for that sale that have been established by the Secretary.

(3) The potential investors in the mortgage have agreed to keep the information confidential and to use the information only to evaluate the mortgage in connection with their investment decision.

(c) *To whom may potential investors disclose such information?* Potential investors in the mortgage may disclose the information to other entities only if the disclosure is:

- (1) Necessary for the investor's evaluation of the mortgage;
- (2) Made in accordance with disclosure procedures for the specific sale that have been established by HUD; and

- (3) Limited to the period specified by HUD for the mortgage sale.

(d) *What sanctions are available for improper disclosure of such information?* An eligible potential purchaser or a potential investor (who has received the information from a potential purchaser and has been notified by that entity of its obligations under paragraph (b) of this section), who discloses information from Form HUD-92410 in violation of this regulation, may be subject to sanctions under part 24 of this title.

§ 15.110 What fees will HUD charge?

(a) *How will HUD determine your fee?* HUD will determine your fee based on which category of requester you are in and on the other provisions of this section. With your request, you should submit information to help HUD determine the proper category. If HUD cannot tell from your request, or if HUD has reason to doubt the use to which the records will be put, HUD will ask you to provide additional information before assigning the request to a specific category.

(b) *What are the categories of requesters?*—(1) *Commercial use requester.* You are a commercial use requester if you request information for a use or purpose that furthers your commercial, trade, or profit interests or those interests of the person on whose behalf you have made the request. In determining whether your request properly belongs in this category, HUD

determines the use to which you will put the documents requested.

(2) *Educational requester.* You are an educational requester if your request is on behalf of an educational institution and you do not seek the records for a commercial use, but to further scholarly research.

(3) *Non-commercial scientific requester.* You are a non-commercial scientific requester if you are not a commercial use requester and your request is on behalf of an organization that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(4) *Representative of the news media requester.* (i) You are a representative of the news media requester if you actively gather news for an entity that is primarily organized and operated to publish or broadcast news to the public.

(ii) Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public.

(iii) Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but HUD may also look to the past publication record of a requester in making this determination.

(iv) If you are a representative of the news media requester, HUD will not consider you to be a commercial use requester.

(5) *Other requester.* You are considered an "other" requester if you do not fall within the categories of requesters described above.

(c) *FOIA Fee Schedule.* The following table sets out the Fee Schedule that HUD uses to determine your fee. The rates for professional and clerical search and review includes the salary of the employee performing the work. The duplication cost includes the cost of operating duplicating machinery. The computer run time includes the cost of operating a central processing unit for that portion of the operating time attributable to searching for responsive records, as well as the costs of operator/programmer salary apportionable to the search. HUD's fee schedule does not include overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

Activity	Rate	Commercial use requester	News media, educational research, or scientific research requester	Other requester
Professional search	\$37.00 per hour	Applies	Does not apply	Applies. No charge for first two hours of cumulative search time.
Professional review	\$37.00 per hour	Applies	Does not apply	Does not apply.
Clerical search	\$16.35	Applies	Does not apply	Applies. No charge for first two hours of cumulative search time.
Clerical review	\$16.35 per hour	Applies	Does not apply	Does not apply.
Programming services	\$35.00 per hour	Applies	Does not apply	Applies.
Computer run time (includes only mainframe search time not printing).	The direct cost of conducting the search.	Applies	Does not apply	Applies.
Duplication costs	\$0.15 per page	Applies	Applies. No charge for first 100 pages.	Applies. No charge for first 100 pages.

(d) *How does HUD assess review charges?* HUD will assess review charges only for the first time it analyzes the applicability of a specific exemption to a particular record or portion of a record. HUD will not charge for its review at the administrative appeal level of an exemption already applied. If HUD has withheld in full a record or portions of a record under an exemption which is subsequently determined not to apply, HUD will assess charges for its review to determine the applicability of other exemptions not previously considered.

(e) *How does HUD handle multiple requests?* If you, or others acting with you, make multiple requests at or about the same time for the purpose of dividing one request into a series of requests for the purpose of evading the assessment of fees, HUD will aggregate your requests for records. In no case will HUD give you more than the first two hours of search time, or more than the first 100 pages of duplication without charge.

(f) *Unsuccessful searches.* If HUD's search for records is unsuccessful, HUD will still bill you for the search.

(g) *No charge for costs under \$25.* HUD will not charge you a fee if the total amount calculated under this section is less than \$25.00.

(h) *Reducing fees in the public interest.* If HUD determines that disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that you are not seeking the information for your own commercial interests, HUD may waive or reduce the fee.

(i) *When do I pay the fee?* HUD will bill you when it responds to your request. You must pay within thirty-one calendar days. If the fee is more than \$250.00 or you have a history of failing to pay FOIA fees in a timely manner,

HUD will ask you to remit the estimated amount and any past due charges before sending you the records.

(j) *What happens if I do not pay the fees?* (1) If you do not pay by the thirty-first day after the billing date, HUD will charge interest at the maximum rate allowed under 31 U.S.C. 3717.

(2) If you do not pay the amount due within ninety calendar days of the due date, HUD may notify consumer credit reporting agencies of your delinquency.

(3) If you owe fees for previous FOIA responses, HUD will not respond to further requests unless you pay the amount due.

(k) *Contract services.* HUD will contract with private sector sources to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient method. When doing so HUD will charge the cost to the requester that the private sector source has charged HUD for performing these tasks. In some instances, these costs may be higher than the charges HUD would ordinarily charge if the processing tasks had been done by the agency itself. In no case will HUD contract out responsibilities which the FOIA provides that HUD alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. HUD will ensure that, when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the National Technical Information Service, HUD will inform requesters of the steps necessary to obtain records from those sources. Information provided routinely in the normal course of business will be provided at no charge.

\$15.111 How do I appeal a denial of my request for records or a fee determination?

(a) *To what address do I submit my appeals?* You must submit your appeal,

in writing, to the address specified in HUD's notice responding to your FOIA request (see § 15.106(a)(2)(iv)). If you send your appeal to the wrong HUD office, that office will forward it to the correct office. That office will also notify you that it has so forwarded your appeal and advise you that, for processing purposes, the time of receipt will be when the appropriate office receives your appeal.

(b) *How much time do I have to submit an appeal?* Your written appeal must be postmarked within 30 calendar days of the date of the HUD determination from which you are appealing. If your appeal is transmitted by other than the United States Postal Service (i.e., facsimile, messenger or delivery service) it must be received in the appropriate office by close of business on the 30th calendar day after the date of the HUD determination.

(c) *What information must I provide if I am appealing a denial of request for information?* If you are appealing a denial of your request for information, the appeal must contain the following information:

- (1) A copy of your original request;
- (2) A copy of the written denial of your request; and
- (3) Your statement of the facts and legal arguments supporting disclosure.

(d) *What information must I provide if I am appealing a fee determination?* If you are appealing a fee determination, including a denial of your request for HUD to waive the fee, the appeal must contain the following information:

- (1) The address of the office which made the fee determination from which you are appealing;
- (2) The fee that office charged;
- (3) The fee, if any, you believe should have been charged;
- (4) The reasons you believe that your fee should be lower than the fee which the Agency charged or should have been waived; and

(5) A copy of the initial fee determination and copies of any correspondence concerning the fee.

(e) *What information must I provide if I am appealing a denial of expedited processing?* If you are appealing a denial of your request for expedited processing, your appeal must contain the following information:

- (1) A copy of your original request;
- (2) A copy of the written denial of your request; and
- (3) Your statement of the facts and legal arguments supporting expedited processing.

§ 15.112 How will HUD respond to my appeal?

(a) *How much time does HUD have to decide my appeal?* HUD will decide your appeal of a denial of expedited processing within 10 working days after its receipt. For any other type of appeal, HUD will decide your appeal within 20 working days after its receipt. HUD may have an additional 10 working days if unusual circumstances require.

(b) *What action will HUD take if it grants my appeal?* (1) *Appeal of a denial of request for information.* If you are appealing a decision to deny your request for records, HUD will either:

(i) Give you the records you requested or advise you that the records will be provided by the originating office;

(ii) Give you some of the records you requested while declining to give you other records you requested, tell you why HUD has concluded that the documents were exempt from disclosure under FOIA, and tell you how to obtain judicial review of HUD's decision; or

(iii) Decline to give you the records you requested, tell you why HUD has concluded that the records were exempt from disclosure under FOIA, and tell you how to obtain judicial review of HUD's decision.

(2) *Appeal of a fee determination.* If you are appealing a fee determination, HUD will either:

(i) Waive the fee or charge the fee that you have requested;

(ii) Modify the original fee charged, and explain why it has determined that the fee is appropriate; or

(iii) Advise you that the original fee charged was appropriate, and explain why it has determined that the fee is appropriate.

(3) *Appeal of a denial of expedited processing.* If you are appealing a denial of your request for expedited processing, HUD will either:

(i) Agree to expedited processing of your request; or

(ii) Advise you that the decision to deny expedited processing has been affirmed, and tell you how to obtain judicial review of HUD's decision.

5. Remove subparts C, D, F, G, and J.

6. Redesignate subparts H, consisting of §§ 15.71 through 15.74, as subpart C, consisting of §§ 15.201 through 15.204, to read as follows:

Subpart C—Production In Response to Subpoenas or Demands of Courts or Other Authorities

Sec.

15.201 Purpose and scope.

15.202 Production or disclosure prohibited unless approved by the Secretary.

15.203 Procedure in the event of a demand for production or disclosure.

15.204 Procedure in the event of an adverse ruling.

7. In newly designated § 15.201, the undesignated paragraph is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 15.201 Purpose and scope.

* * * * *

(b) The term "legal proceeding" has the meaning given in § 15.301(b).

§ 15.203 [Amended]

8. In newly designated § 15.203(a), revise the reference to § 15.71 to read § 15.201.

§ 15.204 [Amended]

9. In newly designated § 15.204, revise the reference to § 15.73(b) to read § 15.203(b).

10. Redesignate subpart I, consisting of §§ 15.81 through 15.85, as subpart D, consisting of §§ 15.301 through 15.309, to read as follows:

Subpart D—Testimony of Employees in Legal Proceedings

Sec.

15.301 Purpose.

15.302 Testimony in proceedings in which the United States is a party.

15.303 Legal proceedings among private litigants; general rule.

15.304 Legal proceedings among private litigants; subpoenas.

15.305 Legal proceedings among private litigants; expert or opinion testimony.

§ 15.304 [Amended]

11. In newly designated § 15.304, revise the reference to §§ 15.71–15.74 to read §§ 15.201–204.

Dated: June 14, 2000.

Andrew Cuomo,
Secretary.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A—Reading Rooms

The Department maintains a reading room in Headquarters, 451 Seventh Street, SW, Washington, DC 20410 and in each of its Secretary Representative's Offices as follows:

New England, Boston Office—Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222-1092. The New England Office oversees jurisdiction for HUD Offices located in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island.

New York/New Jersey, New York Office—26 Federal Plaza, New York, New York 10278-0068. The New York/New Jersey Office oversees jurisdiction for HUD Offices located in New York and New Jersey.

Mid Atlantic, Philadelphia Office—Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106-3392. The Mid Atlantic Office oversees jurisdiction for HUD Offices located in Pennsylvania, Delaware, Maryland, Virginia, and West Virginia.

Southeast/Caribbean, Atlanta Office—Five Points Plaza Building, 40 Marietta St., Atlanta, Georgia 30303. The Southeast/Caribbean Office oversees jurisdiction for HUD Offices located in Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, and Puerto Rico.

Midwest, Chicago Office—Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604-3507. The Midwest Office oversees jurisdiction for HUD Offices located in Illinois, Indiana, Ohio, Michigan, Wisconsin, and Minnesota.

Southwest, Fort Worth Office—Burnett Plaza Building, 801 Cherry Street, Fort Worth, Texas 76102. The Southwest Office oversees jurisdiction for HUD Offices located in Oklahoma, Texas, Arkansas, Louisiana, and New Mexico.

Great Plains, Kansas City Office—Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101-2406. The Great Plains Office oversees jurisdiction for HUD Offices located in Missouri, Iowa, Kansas, and Nebraska.

Rocky Mountain, Denver Office—633 17th Street, Denver, Colorado 80202-3607. The Rocky Mountain Office oversees jurisdiction for HUD Offices located in Colorado, Utah, Wyoming, North Dakota, South Dakota, and Montana.

Pacific/Hawaii, San Francisco Office—
Philip Burton Federal Building & U.S.
Courthouse, 450 Golden Gate Avenue, PO
Box 36003, San Francisco, California 94102—
3448. The Pacific/Hawaii Office oversees

jurisdiction for HUD Offices located in
California, Nevada, Arizona, and Hawaii.
Northwest/Alaska, Seattle Office—Suite
200, Seattle Federal Office Building, 909 First
Avenue, Seattle, Washington 98104–1000.
The Northwest/Alaska Office oversees

jurisdiction for HUD Offices located in
Alaska, Washington, Oregon, and Idaho.
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