

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 5 and 202**

[Docket No. FR-4681-F-03]

RIN 2501-AC80

Uniform Financial Reporting Standards for HUD Housing Programs, Additional Entity Filing Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulation on Uniform Financial Reporting Standards by adding HUD-approved Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and nonsupervised loan correspondents to the covered entities required to electronically submit annual financial information to HUD prepared in accordance with Generally Accepted Accounting Principles (GAAP). Under long-standing regulatory and contractual requirements, these entities already submit financial information to HUD on an annual basis. This final rule follows publication of a November 30, 2001, proposed rule. HUD is adopting the proposed regulatory amendments without change, except that the fiscal year effective dates are being delayed to accommodate the later than expected publication of the final rule.

EFFECTIVE DATE: September 16, 2002.

FOR FURTHER INFORMATION CONTACT: For further information about the entities covered by this rule, you may contact Lynn Herbert, Office of Lender Activities and Program Compliance, Office of Housing, U.S. Department of Housing and Urban Development, 490 L'Enfant Plaza East, SW., Suite 3214, Washington, DC 20024, telephone 202-708-3976 (this is not a toll-free number). For general information about this rule, contact Stacey Shindelar, Office of Lender Activities and Program Compliance, Office of Housing, U.S. Department of Housing and Urban Development, 490 L'Enfant Plaza East, SW., Suite 3214, Washington, DC 20024; telephone 202-708-1515 (this is not a toll-free number). Persons with hearing- or speech-impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background**

HUD's Uniform Financial Reporting Standards (UFRS) regulations, codified at 24 CFR part 5, subpart H, establish

uniform annual financial reporting standards for the following entities: public housing agencies (PHAs) administering traditional public housing; PHAs administering section 8 project-based housing assistance payments programs and section 8 project-based certificate programs; owners of housing assisted under any section 8 project-based program (except for the Moderate Rehabilitation and project-based certificates programs, for which the reporting requirement applies to the administering PHAs); and multifamily housing programs receiving assistance or mortgage insurance from HUD. The regulations provide that the financial information required to be submitted to HUD on an annual basis under these programs generally must be submitted electronically and must be prepared in accordance with GAAP.

On November 30, 2001, HUD published a proposed rule (66 FR 60133) to add participants under another program to the programs covered under the UFRS rule. HUD also published a correction amending a portion of the rule preamble, on December 18, 2001 (66 FR 65162). The new covered participants are the Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and nonsupervised loan correspondents, who are approved by HUD under 24 CFR part 202 to originate, purchase, hold, service, and/or sell loans. In addition to the revisions to 24 CFR 5.801 to add these participants, the proposed rule made conforming changes to 24 CFR 202.5, 202.7, and 202.8.

II. This Final Rule

This final rule adopts the proposed change made to 24 CFR 5.801 and the conforming changes to 24 CFR 202.5, 202.7, and 202.8. The public comment period for the proposed rule closed on January 29, 2002. By close of business on that date, HUD had not received any public comments on the proposed rule. One comment addressed to the estimate of paperwork burden was received; however, HUD believes that its estimate of paperwork was accurate and made no changes. The only change made to the proposed rule is that the fiscal year-end effective date in 24 CFR 5.801(d)(3) is changed to accommodate the actual publication date of this final rule. This final rule is effective for the covered Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents with fiscal years ending on or after September 30, 2002. Audited financial statements submitted by lenders with fiscal years ending on or after September 30, 2002, must be submitted electronically. Audited

financial statements submitted by lenders with fiscal years ending before September 30, 2002, may either be submitted in paper or electronically at the lenders' option.

Findings and Certifications*Paperwork Reduction Act*

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2507-0004. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This final rule would not impose any Federal mandates on any State, local, or tribal governments, or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Impact

This final rule 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. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (24 U.S.C. 4321).

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. This rule does not create a new reporting requirement. The annual reporting of certain financial information is a preexisting HUD program requirement. This rule adds HUD approved Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents to the covered entities that must submit

financial data electronically. The rule standardizes, to the extent possible, the content of the information and the preparation of the information (in accordance with GAAP). HUD anticipates that these changes will bring consistency, simplicity, and reduced administrative burden to the reporting process. With respect to costs, the audit costs paid by Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents are a recognized part of operating and administrative expenses. HUD anticipates no or very little monetary impact. The Federal Housing Commissioner has required GAAP-based accounting for a number of years and the majority of these lenders already adhere to its tenets.

Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers applicable to 24 CFR part 202 are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends title 24 of the Code of Federal Regulations to read as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENT; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. Amend § 5.801 by adding paragraphs (a)(5), (c)(3), and (d)(3) to read as follows:

§ 5.801 Uniform financial reporting standards.

(a) * * *

(5) HUD-approved Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents.

(c) * * *

(3) For those entities listed in paragraph (a)(5) of this section, the financial information to be submitted to HUD in accordance with paragraph (b) of this section must be submitted to HUD annually, no later than 90 days after the end of the fiscal year (or within an extended time if an extension is granted at the sole discretion of the Secretary). An extension request must be received no earlier than 45 days and no later than 15 days prior to the submission deadline.

(d) * * *

(3) The requirements of this section apply to the entities listed in paragraph (a)(5) of this section with fiscal years ending on or after September 30, 2002. Audited financial statements submitted by lenders with fiscal years ending before September 30, 2002, may either be submitted in paper or electronically at the lenders' option. Audited financial statements submitted by lenders with fiscal years ending on or after September 30, 2002, must be submitted electronically.

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PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

3. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

4. In § 202.5, revise paragraph (n)(1) introductory text to read as follows:

§ 202.5 General approval standards.

* * * * *

(n) *Net Worth.* (1) Each supervised or nonsupervised lender or mortgagee approved under §§ 202.6 and 202.7 shall have a net worth of not less than \$250,000 in assets acceptable to the Secretary. Each Title II supervised or nonsupervised mortgagee, except a multifamily mortgagee, shall have additional net worth in excess of \$250,000 of not less than one percent of the mortgage volume exceeding \$25,000,000 in value, but total net worth is not required to exceed \$1,000,000. Mortgage volume is calculated as of the end of the fiscal year being audited and equals the sum of:

* * * * *

5. In § 202.7, revise paragraphs (b)(4)(i) introductory text and (b)(4)(i)(A) to read as follows:

§ 202.7 Nonsupervised lenders and mortgagees.

* * * * *

(b) * * *

(4) *Audit report.* (i) A lender or mortgagee must comply with the financial reporting requirements in 24 CFR part 5, subpart H. Audit reports shall be based on audits performed by a certified public accountant, or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:

(A) A financial statement in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, a statement of cash flows, an analysis of the mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

* * * * *

6. In § 202.8, revise paragraphs (b)(3) introductory text and (b)(3)(i) to read as follows:

§ 202.8 Loan correspondent lenders and mortgagees.

* * * * *

(b) * * *

(3) *Audit report.* A loan correspondent lender or mortgagee must comply with the financial reporting requirements in 24 CFR part 5, subpart H except that a loan correspondent mortgagee meeting the definition of a supervised lender or mortgagee in § 202.6(a) need not file annual audit reports. Audit reports shall be based on audits performed by a certified public accountant, or by an independent public accountant licensed by a regulatory authority of a State or

other political subdivision of the United States on or before December 31, 1970, and shall include:

(i) A financial statement in a form acceptable to the Secretary, including a balance sheet, statement of operations

and retained earnings, a statement of cash flows, an analysis of the net worth adjusted to reflect only assets acceptable to the Secretary and an analysis of escrow funds; and

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Dated: August 7, 2002.

John C. Weicher,
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–20678 Filed 8–14–02; 8:45 am]

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