

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 202

[Docket No. FR-4681-P-01]

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: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulation on Uniform Financial Reporting Standards by adding HUD Approved Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents to the covered entities required to electronically submit annual financial information to HUD prepared in accordance with generally accepted accounting principles. Under long-standing regulatory and contractual requirements, these entities already submit financial information to HUD on an annual basis.

DATES: *Comment Due Date:* January 29, 2002.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response 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: For further information about the entities covered by this proposed rule, Lynn Herbert, the Office of Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone 202-708-3976 (this is not a toll-free number). For general information about this proposed rule, Stacey Kniff, Real Estate Assessment Center, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024; telephone Technical Assistance Center, 1-888-245-4860 (this is 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: 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.

The move to uniform financial reporting standards in HUD programs was initiated to bring consistency and efficiency in financial reporting. In addition, the electronic submission of financial reporting standards, as a substitute for paper submissions, is in accordance with the Government Paperwork Elimination Act, 44 U.S.C. 3504.

Since the implementation of the UFRS rule, HUD believes that the transition to electronic reporting of financial information using uniform accounting principles has proceeded well. HUD has worked closely with the entities currently subject to these standards ("covered entities") to assist them in becoming familiar with GAAP and reporting information electronically. The electronic submission of information results in significant benefits, such as increasing the speed of information preparation and exchange, cost savings from reduced need for storage space, fewer errors than occur with paper submissions, and faster HUD review and analysis.

This proposed rule adds participants under another program to the programs covered under the UFRS rule, 24 CFR

part 5, subpart H. The new covered participants are the Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents who are approved by HUD under 24 CFR part 202 to originate, purchase, hold, service and/or sell loans. In addition to revisions to part 5 to add these participants, this rule makes conforming changes to 24 CFR 202.5, 202.7, and 202.8.

HUD believes that the transition from paper to electronic filing for these entities will also proceed well, and will benefit the industry, the Department and taxpayers. This progression to electronic reporting will be further facilitated by the fact that these Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents currently receive all loan authorizations exclusively through the HUD electronic secure on-line Internet system. Accordingly, these entities are familiar with HUD's electronic secure systems.

This rule when issued as a final rule would be effective for the covered Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents after December 31, 2001. Audited financial statements submitted by the covered entities on or after January 1, 2002, must be submitted electronically. Audited financial statements submitted prior to January 1, 2002, may either be submitted in paper or electronically at the lenders' option.

Findings and Certifications

Paperwork Reduction Act

The proposed new information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The public reporting burden for this new collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in the following table.

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
§ 5.801(c)(3)	7,000	1	7,000	3.0	21,000

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received by January 29, 2002. Comments must refer to the proposal by name and docket number (FR-4552-P-01) and must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503 and Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

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 rule will 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 proposed rule does not direct, provide for assistance or loan or 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 proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 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 proposed 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.

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

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 proposed rule does 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.

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 proposes to amend 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) * * *

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(3) The requirements of this section will go into effect with respect to those entities listed in paragraph (a)(5) of this section. Audited financial statements submitted before June 1, 2002, may either be submitted in paper or electronically at the lenders' option. Audited financial statements submitted by lenders on and after June 1, 2002, must be submitted electronically.

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: October 30, 2001.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

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