

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 15**

[Docket No. FR-4783-F-01]

RIN 2501-AC90

**Testimony of Employees in Legal Proceedings****AGENCY:** Office of the Secretary, HUD.**ACTION:** Final rule.

**SUMMARY:** This final rule amends HUD regulations to delegate authority to the General Counsel to authorize, for good cause shown, an employee to testify as an expert or opinion witness in both matters in which the United States is a party as well as in matters exclusively among non-federal litigants.

**DATES:** Effective Date: November 22, 2002.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****Background**

This rule amends the HUD regulations in subpart D of 24 CFR part 15 to provide explicitly that only the Secretary or the General Counsel may authorize an exception to the general prohibition against an employee of the Department being called to testify as an expert or opinion witness by a party other than the United States. The rule also defines "good cause" for when HUD may permit expert or opinion testimony under specified circumstances.

The general rule currently in 24 CFR 15.302 only permits employees of the Department to provide expert or opinion testimony on behalf of the United States. The objective of HUD's decision to authorize its employees to provide such testimony on behalf of non-federal litigants for good cause shown is to allow HUD to respond to meritorious requests for expert and opinion testimony, for example in criminal proceedings or administrative disciplinary actions for misconduct in connection with a HUD program. HUD believes that the amendment made by this rule will strengthen the integrity of

HUD programs, and support HUD's partners in ensuring that business is conducted in accordance with HUD's core values and ethical standards.

**Findings and Certifications***Justification for Final Rule*

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule under which prior notice and comment are not required. One exception provides that the notice and public procedure may be omitted with respect to rules governing the Department's organization or the Department's own internal practices or procedures. This rule authorizes the General Counsel to make determinations regarding the testimony of employees of the Department in legal proceedings, and, as such, is limited to the Department's internal practices and procedures. Prior notice and comment are, therefore, not required.

*Environmental Review*

This rule would 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 rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321).

*Unfunded Mandates Reform Act*

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 rule would not impose a Federal mandate that will result in expenditure by State, local, or tribal governments and the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive

discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. The rule only addresses the Department's internal practices and procedures.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would 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.

**List of Subjects in 24 CFR Part 15**

Administrative practice and procedure, courts.

Accordingly, for the reasons described in the preamble, HUD is amending 24 CFR part 15 to read 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. The authority citation for 24 CFR part 15 continues 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.

2. Revise § 15.302(a) to read as follows:

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

(a) In any legal proceeding in which the United States is a party, an employee of the Department may not be called to testify as an expert or opinion witness by any party other than the United States unless specifically authorized by the Secretary or the General Counsel for good cause shown. An employee may be called by a non-federal party to testify as to facts.

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3. Revise § 15.303 to read as follows:

**§ 15.303 Legal proceedings among non-federal litigants; general rule.**

(a) In any legal proceeding exclusively among non-federal litigants, no employee of the Department may, unless specifically authorized by the Secretary or General Counsel for good cause shown, testify as an expert or opinion witness as to any matter related to his or her duties or the functions of the Department, including the meaning of Departmental documents.

(b) For purposes of this subpart, “good cause” includes action necessary to prevent a miscarriage of justice or to promote a significant interest of the Department.

4. Revise § 15.305 to read as follows:

**§ 15.305 Legal proceedings among non-federal litigants; expert or opinion testimony.**

If, while testifying in a legal proceeding exclusively among non-federal litigants, an employee of the

Department is asked for expert or opinion testimony, the employee shall, unless specifically authorized by the Secretary or General Counsel in accordance with § 15.303, decline to answer on the grounds that he or she is forbidden to do so by this part.

Dated: October 16, 2002.

**Mel Martinez,**

*Secretary.*

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