

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT****Office of the Secretary****24 CFR Part 15**

[Docket No. FR-3949-F-01]

RIN 2501-AC03

**Testimony, Production, and Disclosure  
of Material or Information by HUD  
Employees**

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

**SUMMARY:** This final rule amends HUD's regulations regarding the testimony and production of information by HUD employees. This rule will include former HUD employees within the scope of these regulations. The amendment is necessary in order to correct the inadvertent exclusion of former employees from coverage under the regulations.

EFFECTIVE DATE: December 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** George Weidenfeller, Deputy General Counsel for Operations, Department of Housing and Urban Development, 451 7th St., SW, Room 10240, Washington, DC 20410; telephone (202) 708-2864, TDD (202) 708-3259. These numbers are not toll-free.

**SUPPLEMENTARY INFORMATION:** HUD's regulations for the disclosure of information and production of material in its possession or acquired by employees as a part of the performance of their official duties or because of their official status are contained in 24 CFR part 15. These regulations address the terms on which HUD employees may testify, describing the situations in which the Secretary will permit the testimony of HUD employees in judicial, quasi-judicial, and legislative proceedings. The regulations also prohibit, subject to waiver by the Secretary, any employee from being called, by any party other than the United States, as an expert or opinion witness as to matters related to the employee's duties or the functions of HUD.

HUD employees may acquire certain sensitive information or documentation through the course of their employment at HUD, and HUD expects such information and documentation to be covered by its testimony approval regulations in part 15. However, on April 15, 1987, in an attempt to streamline these regulations, HUD published a final rule in the Federal Register that removed the references to former HUD employees (52 FR 12159).

HUD did not intend this change to exclude former employees from coverage; rather HUD expected that the Standards of Conduct regulations covered the testimony and production of information by former HUD employees. As the Standard of Conduct regulations do not cover this area, this rule amends subparts H and I of part 15 to reinsert the coverage of former employees. This rule also brings HUD's regulations back into general conformity with the regulations of several other Federal agencies, such as the Departments of Justice, Education, and Transportation (see 28 CFR part 16, 34 CFR part 8, and 49 CFR part 9, respectively).

**Justification for Final Rulemaking**

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions from that general rule when the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The subject matter of this final rule involves HUD's internal practices and procedures. Therefore, HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary.

**Executive Order 12866**

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500.

**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 does not have a significant economic impact on a substantial number of small entities, since its effect is limited to details of agency procedure.

**Environmental Impact**

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, this rule relates only to internal administrative procedures which are categorically excluded from the requirements of the National Environmental Policy Act.

**Executive Order 12612, Federalism**

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule relates to internal procedures regarding former employees and does not affect Federalism issues. As a result, this rule is not subject to review under the Order.

**Executive Order 12606, The Family**

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have the potential for significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

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

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

Accordingly, 24 CFR part 15 is amended as follows:

**PART 15—TESTIMONY, PRODUCTION  
AND DISCLOSURE OF MATERIAL OR  
INFORMATION BY HUD EMPLOYEES**

1. The authority citation for part 15 continues to read as follows:

Authority: 5 U.S.C. 552; Freedom of Information Reform Act of 1986 (Pub. L. 99-570); 42 U.S.C. 3535(d).

2. Section 15.71 is amended by revising the second sentence to read as follows:

**§ 15.71 Purpose and scope.**

\* \* \* For purposes of this subpart, the term *employee of the Department* includes current and former officers and employees of the United States

appointed by or subject to the supervision of the Secretary, but does not include officers and employees covered by part 2004 of this title.\* \* \*

3. Section 15.81 is amended by revising paragraph (b) to read as follows:

**§ 15.81 Purpose.**

\* \* \* \* \*

(b) For purposes of this subpart, the term *employee of the Department* includes current and former officers and employees of the United States appointed by or subject to the supervision of the Secretary, but does not include officers and employees covered by part 2004 of this title.

Dated: September 8, 1995.

Henry G. Cisneros,

*Secretary.*

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