

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

[Docket No. FR-4347-N-01]

**Notice and Request for Comments on  
HUD's Implementation of the Small  
Business Regulatory Enforcement  
Fairness Act of 1996**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice solicits comments on HUD's implementation of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The notice describes HUD's implementation to date of SBREFA and additional implementation plans.

**DATES: COMMENT DUE DATE:** July 20, 1998.

**ADDRESSES:** Interested persons are invited to submit comments regarding this document to the Regulations Division, 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 and to the specific sections in the regulation. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Casimir Bonkowski, Director, Office of Small and Disadvantaged Businesses, Department of Housing and Urban Development, Room 3130 451 Seventh Street, S.W., Washington, DC 20410, telephone 202-708-1428. Hearing- or speech-impaired persons may use the telecommunications system for the hearing-impaired (TTY) by contacting the Federal Information Relay Service on 1-800-877-TTY (1-800-877-8339) or (202) 708-9300. (Other than the "800" TTY number, telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

**I. The Small Business Regulatory  
Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.L. 104-121, 110 Stat. 847, approved March 29, 1996) ("SBREFA") provides, among other things, for agencies to establish specific policies or programs to assist small entities. Small entities include small businesses, nonprofit organizations, and small governmental jurisdictions.

Section 213 of SBREFA requires each covered agency to establish a program to

answer inquiries concerning information and advice about compliance with statutes and regulations within the agency's jurisdiction. The agency must use information received during these inquiries to help small entities interpret and apply the regulations to specific facts.

Section 223 of SBREFA requires each covered agency to establish a policy or program to reduce or waive civil penalties when a small entity violates a statute or regulation. Under appropriate circumstances, an agency may consider ability to pay when it assesses a penalty against a small entity.<sup>1</sup>

**II. Identification of HUD Regulations  
That May Have a Significant Economic  
Impact on a Substantial Number of  
Small Entities**

Although HUD is not generally regarded as a "regulatory agency", HUD has important regulatory responsibilities, including oversight and enforcement of the Real Estate Settlement Procedures Act (RESPA) and the Interstate Land Sales Full Disclosure Act; oversight over certain activities of government-sponsored enterprises (GSEs); oversight and enforcement of FHA mortgage insurance programs; and the establishment and enforcement of lead-based paint hazard control standards and manufactured housing standards.

HUD has long had in place a systematic process for determining whether newly developed rules are likely to have a significant economic impact on a substantial number of small entities. The typical HUD rule implements statutory directions for the administration of grant programs. Rules of this type are intended to reflect Congressional mandates that, by their nature, have universal applicability to the portion of the public affected by the rule. These rules generally do not lend themselves to the provision of special procedures, or exemptions from requirements, applicable to small entities. Although HUD Rules are generally not the type to lend themselves to special procedures or exemptions for small entities, HUD nevertheless has developed a process intended to introduce additional scrutiny to existing procedures for safeguarding the interests of small entities during development and

<sup>1</sup> The applicable procurement statutes and regulations do not provide for special consideration of or rights for small governmental entities. SBREFA did not make statutory changes that would result in changes to the Federal Acquisition Regulation to address small entities.

following implementation of regulations.

To ensure that there is a meaningful assessment of HUD rules to determine which rules, if any, will have a significant economic impact on substantial number of small businesses, HUD:

(1) Targets regulations that may impact small businesses at the earliest opportunity in the development process; and

(2) Assigns oversight responsibility to HUD's Office of Small and Disadvantaged Business Utilization (OSDBU) to review:

(i) the HUD program office's assessment of any significant economic impact on a substantial number of small entities;

(ii) the HUD program office's assessment and disposition of all alternative rule implementation strategies submitted by small entities, and

(iii) the small entity compliance guides prepared by the program offices, where applicable.

**III. Guidance to Small Entities**

To help small entities understand their obligations under the regulations administered by HUD, HUD provides both general guidance and individualized advice. OSDBU maintains the requirements of the SBREFA and Regulatory Flexibility Act on the HUD web site with instructions to small entities on the OSDBU role as small business Ombudsman, as well as copies of compliance guides, names of HUD staff with familiarity in HUD programs that may impact small businesses, to answer questions, and a users forum where representatives of small entities can ask questions on a specific rule as a means of providing a fast means of clarifying issues. Additionally, small entities can download regulations, forms, and documentation from the HUD web pages. If a small entity does not have access to a computer, HUD will mail this information on request.

To ensure that we evaluate and update our small entity assistance program periodically, HUD works with the Small Business Administration to identify small business concerns in the housing industry.

**IV. Rights of Small Entities in  
Enforcement Actions**

Section 223 of SBREFA requires agencies that regulate the activities of small entities to establish a policy or program to reduce or, under appropriate circumstances, waive civil penalties when a small entity violates a statute or

regulation. (For purposes of brevity, this policy or program is referred to as the "small entity compliance policy.")

Section 223 also requires an agency's small entity compliance policy to contain conditions or exclusions (subject to any restrictions or limitations that may be imposed on the agency by other statutes), which conditions or exclusions may include, but are not limited to the following:

(1) Requiring small entities to correct the violation within a reasonable correction period;

(2) Limiting applicability of the small entity compliance policy to violations discovered when small entities participate in a compliance assistance or audit program operated by the agency;

(3) Excluding from applicability of the small entity compliance policy those small entities that have been subject to multiple enforcement actions by the agency;

(4) Excluding from applicability of the small entity compliance policy violations involving willful or criminal conduct or that pose serious health, safety, or environmental threats, safety, or requiring a good-faith effort to comply with the law.

Federal statutes and regulations authorize HUD to impose civil penalties in conjunction with regulatory and enforcement issues. Under these authorities, HUD has authority to issue civil money penalties for violations of requirements governing its grant, mortgage insurance, and the regulatory programs, identified earlier in this notice.

In establishing its policy for implementation of SBREFA, following enactment of SBREFA, HUD reported to President Clinton and the Congress that,

under appropriate circumstances, HUD may consider ability to pay in determining penalty assessments on small entities. HUD notes that the ability to pay is a legislative directive for many programs under the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989). HUD's policy to date has been to assist regulated entities in achieving compliance with requirements in order to avoid any penalty process.

Where penalties are determined appropriate, HUD's policy is to consider: (1) the nature of the violation (the violation must not be one that is repeated or multiple, willful, criminal or poses health or safety risks), (2) whether the entity has shown a good faith effort to comply with the regulations; and (3) the resources of the regulated entity. Depending upon the circumstances surrounding the violation, it is not HUD's intent to put any individual or entity out of business by the penalties or settlement amounts paid to the Federal Government.

#### **V. Small Entities' Comments on Agencies Enforcement Activities**

Section 222 of SBREFA requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel.

To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices which are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

#### **Your Comments Are Important**

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call [provide telephone number].

HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD. HUD intends to include this language in HUD general circulation issuances and publications regarding enforcement actions. HUD welcomes comments on the manner in which it has implemented SBREFA to date, and the additional action intended to be taken as described in this notice.

Dated: May 14, 1998.

**Andrew Cuomo,**

*Secretary.*

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