

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 2002

[Docket No. FR-4716-P-01]

RIN 2508-AA12

Implementation of the Freedom of Information Act

AGENCY: Office of Inspector General (OIG), HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends The Office of Inspector General's Freedom of Information Act (FOIA) (5 U.S.C. 552) regulation, and implements the statutory requirements of the Electronic Freedom of Information Act (EFOIA) (Pub. L. 104-231).

DATES: *Comment due date:* May 13, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10278, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8260, Washington, DC 20410, (202) 708-1613. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1-800-877-8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

HUD's regulations at 24 CFR part 15 contain the policies and procedures governing public access to HUD records under the FOIA. The Inspector General Act of 1978 (5 U.S.C. App. 3) was enacted to "create independent and objective units" to perform various investigative and monitoring functions within Executive agencies of the Federal Government, including HUD. In furtherance of the goals of independence and objectivity, in 1984 the Inspector General implemented 24 CFR part 2002, which explains the procedures for requesting information from the OIG under the FOIA. Part 2002 is generally similar to HUD's FOIA

regulations at 24 CFR part 15, except that OIG officials, as opposed to HUD officials, make determinations concerning the release of OIG records. Congress amended the FOIA in 1996 with the passage of the EFOIA. In this proposed rule, the OIG would amend its FOIA regulations to implement the EFOIA. Accordingly, the proposed amendments provide for an electronic reading room, modify the FOIA timeframes, and establish multiple "tracks" for processing requests.

Findings and Certifications

Environmental Review

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

Regulatory Flexibility Act

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 does not have a significant economic impact on a substantial number of small entities. This proposed rule contains no anti-competitive discriminatory aspects with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Executive Order 13132, 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 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. Rather, this rule would amend OIG's FOIA regulation and implement the statutory requirements of EFOIA.

Unfunded Mandates Reform Act

Title II of 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 proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

List of Subjects in 24 CFR Part 2002

Freedom of Information.

Accordingly, 24 CFR chapter XII, Part 2002, is proposed to be amended as follows:

PART 2002—AVAILABILITY OF INFORMATION TO THE PUBLIC

1. The authority citation for Part 2002 is revised to read as follows:

Authority: 5 U.S.C. 552; Electronic Freedom of Information Act (Pub. L. 104-231); Freedom of Information Reform Act of 1986 (Pub. L. 99-579); 5 U.S.C. App. 3 (Inspector General Act of 1978); 42 U.S.C. 3535(d); Delegation of Authority, Jan. 9, 1981 (46 FR, 2389).

2. Section 2002.1 is revised to read as follows:

§ 2002.1 Scope of the part and applicability of other HUD regulations.

(a) *General.* This part contains the regulations of the Office of Inspector General, which implements the Freedom of Information Act (5 U.S.C. 552). It informs the public how to request records and information from the Office of Inspector General and explains the procedure to use if a request is denied. Requests for documents made by subpoena or other order are governed by procedures contained in part 2004 of this chapter. In addition to the regulations in this part, the following provisions of part 15 of this title covering the production or disclosure of material or information apply (except as limited in paragraph (b) of this section) to the production or disclosure of material in the possession of the Office of Inspector General:

§ 15.2 What definitions apply to this part?

§ 15.3 What exemptions are authorized by 5 U.S.C. 552?

§ 15.108 What are HUD's policies concerning designating confidential commercial or financial information under Exemption 4 of the FOIA and responding to requests for business information?

§ 15.110 What fees will HUD charge?

(b) *Limited applicability of § 15.110 of this title.* For purposes of this part, paragraphs (d) through (k) of § 15.110 of this title are not applicable.

(c) *Use of the term "HUD".* For purposes of this part, and when the words "HUD" or "Department" are used in this part or §§ 15.2(b), 15.3, 15.108 and 15.110 of this title, the term means the Office of the Inspector General.

(d) *Request for declassification and release of classified material.* Section 15.107 of this title contains provisions for requesting declassification and release of declassified material.

3. Section 2002.3 is revised to read as follows:

§ 2002.3 OIG's overall policy concerning discloseable records and requests for OIG records.

(a) The Office of Inspector General will fully and responsibly disclose its identifiable records and information consistent with competing public interests, such as national security, personal privacy, grand jury and investigative secrecy, complainant confidentiality, agency deliberative process, as are recognized by FOIA and other federal statutes.

(b) A request for Office of Inspector General records may be made in person during normal business hours at any office where Office of Inspector General employees are permanently stationed. Although oral requests may be honored, a requester may be asked to submit the request in writing. A written request shall be addressed to: The Office of Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW, Suite 8260, Washington, DC 20410.

(c) Each request must reasonably describe the desired record including the name, subject matter, and number or date, where possible, so that the record may be identified and located. The request should also include the name, address and telephone number of the requester, and the format in which the requester would like the desired record to be reproduced. In order to enable the Office of Inspector General to comply with the time limitations set forth in § 2002.17, both the envelope containing a written request and the letter itself should clearly indicate that the subject is a Freedom of Information Act request.

(d) The request must be accompanied by the fee or an offer to pay the fee as determined in § 15.110 of this title.

(e) Copies of available records will be made as promptly as possible. Copying service will be limited to not more than 10 copies of any single page. Records that are published or available for sale need not be reproduced.

(f) To the extent that records are readily reproducible, the Office of Inspector General will send records in the form requested, including electronic format.

4. Section 2002.7 is revised to read as follows:

§ 2002.7 OIG processing of requests.

(a) *Multitracking.* (1) The Office of Inspector General places each request in one of two tracks. The Office of Inspector General places requests in its simple or complex track based on the amount of work and time involved in processing the request. Factors the Office of Inspector General will consider in assigning a request in the simple or complex track will include whether the request involves the processing of voluminous documents and/or whether the request involves responsive documents from more than one organizational unit. Within each track, the Office of Inspector General processes requests in the order in which they are received.

(2) For requests that have been sent to the wrong office, the Office of Inspector General will assign the request within each track using the earlier of either:

(i) The date on which the request was referred to the appropriate office; or,

(ii) The end of the ten (10) working day period in which the request should have been referred to the appropriate office.

(b) *Expedited processing.* The Office of Inspector General may take your request or appeal out of normal order if the Office of Inspector General determines that you have a compelling need for the records or in other cases as determined by the Office of Inspector General. If the Office of Inspector General grants your request for expedited processing, the Office of Inspector General will give your request priority and will process it as soon as practicable. The Office of Inspector General will consider a compelling need to exist if:

(1) Your failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or a threatened loss of substantial due process rights; or,

(2) You are primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

5. Section 2002.9 is revised to read as follows:

§ 2002.9 Where to review records.

(a) You may inspect and copy hardcopy records that section 552(a)(2)

of FOIA requires the Office of Inspector General make available to the public in reading rooms. At the Headquarters and DC Offices, this would be at HUD's Library, Suite 8141, 451 Seventh St., SW, Washington, DC 20410, and should be coordinated through Counsel's Office to the Inspector General, Suite 8260. Local offices may coordinate for local requests.

(b) For records created on or after November 1, 1996, this information is available to you through the Office of Inspector General's Internet website at <http://www.hud.gov/oig/oigindex.html>.

6. In § 2002.11, paragraph (a) is revised to read as follows:

§ 2002.11 Review of records, aggregating requests and waiving or reducing fees.

(a) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for the time HUD spends reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time HUD analyzes the applicability of a specific exemption to a particular record or portion of a record. HUD will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Review time will be assessed at the same rates established for search time in § 15.110 of this title.

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7. In § 2002.15, paragraph (b) is revised to read as follows:

§ 2002.15 Advance Payments.

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(b) When HUD acts under paragraph (a)(1) or (a)(2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after HUD has received fee payments described in paragraph (a) of this section.

8. In § 2002.17, paragraph (a) is revised to read as follows:

§ 2002.17 Time limitations.

(a) Upon receipt of a request for records, the appropriate Assistant Inspector General or an appointed designee will determine within twenty

(20) working days whether to grant the request. The Assistant Inspector General or designee will notify the requestor immediately in writing of the determination and the right of the person to request a review by the

Inspector General of an adverse determination.

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9. Sections 2002.5, 2002.13, 2002.19, 2002.21, 2002.23 and 2002.25 shall remain as they currently exist.

Dated: February 4, 2002.

David C. Williams,

Acting Inspector General.

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