

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 5**

[Docket No. FR-4875-F-02]

RIN 2501-AD02

Electronic Submission of Applications for Grants and Other HUD Financial Assistance

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes the requirement for applicants for HUD grants or certain other financial assistance to submit their applications to HUD electronically. This final rule follows publication of a proposed rule on November 23, 2004. HUD received four comments in response to the proposed rule's invitation for public comment. After careful consideration of the comments, this rule makes final without substantive changes the proposed rule published on November 23, 2004.

DATES: *Effective Date:* January 30, 2006.

FOR FURTHER INFORMATION CONTACT:

Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3156, Washington, DC 20410-3000, telephone (202) 708-0667 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background—HUD's November 23, 2004, Proposed Rule**

On November 23, 2004, HUD published a proposed rule (69 FR 68218) that would add a new section to 24 CFR part 5 (§ 5.1005). The new section would require applicants for HUD grants or certain other financial assistance to submit their applications to HUD electronically through the federal government grant portal, *Grants.gov*, or its successor Web site. Applications subject to this requirement would include submissions from applicants for HUD grants, cooperative agreements, capital advances, vouchers, and other financial assistance awards, including programs that are classified by the Office of Management and Budget (OMB) as mandatory, as well as formula grant programs that HUD has placed an electronic application on *Grants.gov/Apply* or its successor Web site. HUD refers readers to the preamble of the November 23, 2004, proposed

rule for a more detailed discussion of the legal authorities and policy objectives on which the rule is based.

HUD noted in the proposed rule that electronic grant application submission will standardize, simplify, and improve the integrity of HUD's grant-making process. For the applicant, electronic submission of applications will result in saving time and resources in preparing, mailing, and delivering paper copies of applications to HUD Headquarters, field offices, or multiple locations.

The proposed rule concluded that the requirement for electronic submission will apply to all program applications or plan submissions placed by HUD at *www.grants.gov/Apply* for electronic submission through the *Grants.gov* portal. The requirement is consistent with the President's goals for electronic government set forth in the President's Management Agenda for Fiscal Year 2002. The proposed rule also indicated that the requirement was responsive to a 2002 OMB policy directive to federal agencies to use the *Grants.gov* Web site to post opportunities with respect to federal financial assistance programs. Additionally, the rule noted that the requirement for electronic submission will not take effect for individual program applications until HUD makes available the electronic application on the *www.grants.gov/Apply* Web site. Finally, to address the concerns of applicants with limited or no access to the Internet, the proposed rule provided that the HUD Assistant Secretary with authority over the program may waive the electronic submission requirement.

II. This Final Rule

This final rule follows publication of the November 23, 2004, proposed rule, and takes into consideration the four public comments received on the proposed rule. The four comments received were from four housing authorities. The Department has carefully considered each of the four comments, and its experience in receiving electronic application submissions for competitive programs using *Grants.gov*, and has determined to adopt the proposed regulation without substantive change. In the interest of clarity, the rule now includes language to specify that a waiver of the requirement for electronic submission will be made in writing. The rule substitutes language for the phrase "or the equivalent HUD official" to identify more particularly the officials who, in addition to the Assistant Secretary, are authorized to grant waivers. The rule would now allow a waiver to be granted by the Assistant Secretary, the General Deputy Assistant Secretary or the

responsible official authorized to perform the duties and responsibilities of the Assistant Secretary or General Deputy Assistant Secretary.

The process for seeking and granting waivers of the requirement to submit an electronic grant application, as provided in this final rule, while similar to HUD's process for waiver of regulations in 24 CFR 5.110, is not the same as the regulatory waiver process. The process for seeking and granting waivers of regulations is governed by section 106 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) (42 U.S.C. 3535(a)). Section 106 requires that waivers of a HUD regulation must be in writing and must specify the grounds for approving the waiver, and HUD must notify the public of waivers granted through a **Federal Register** notice, published each calendar quarter, that provides a summary of the waivers granted in the preceding quarter. While this final rule patterns the waiver process for the electronic grant application requirement largely on the regulatory waiver process, it does not provide for quarterly reporting of waivers granted of the electronic grant application submission requirement. HUD is not adopting that feature of the regulatory waiver process because section 103 of the HUD Reform Act prohibits disclosure of the identity of any applicant before the deadline for submission of the application. However, section 102 of the HUD Reform Act, which establishes the elements of HUD's funding competitions, also requires that each application and all related documentation be available for public inspection at the end of the competition process. In accordance with section 102(a)(4)(E) of the HUD Reform Act, and HUD's implementing regulation at 24 CFR 4.5, all applications and related documentation, including an applicant's request for a waiver from the requirement to file its application electronically and HUD's action on such request, will be available for public inspection commencing 30 days after the award of grants is made and these files must remain available for public inspection for a period of at least five years. Therefore, the transparency required by the HUD Reform Act in the granting of regulatory waivers is also present in the granting of waivers of the electronic grant application requirement.

III. Discussion of Public Comments Received on the November 23, 2004, Proposed Rule

Comment: The rule will require applicants to have yet another password to satisfy the electronic filing

requirement. The commenter questioned the claimed efficiency of the electronic filing process. The commenter wrote that it would be inefficient and confusing to require housing authorities to use different log-ins and passwords for various HUD programs. The commenter observed that because each housing authority already has a unique ID, there should be no reason for a separate ID for use in each program. The commenter expressed a preference for one password that could be used with all government software programs.

HUD Response: HUD acknowledges that the maintenance and use of separate passwords adds to the administrative effort required of housing authorities to participate in the affected programs. However, the *Grants.gov* electronic submission requirement will eliminate that burden. By registering with *Grants.gov* for electronic application submission, an applicant for federal funding, regardless of the agency to which the applicant is applying, will need to use only one password and ID to submit applications for funding posted by all federal agencies through *Grants.gov*. In addition to providing information on funding available from the federal government, *Grants.gov* has posted application packages for funding opportunities in the State of Minnesota and the District of Columbia.

Comment: The commenter supports the rule with qualifications. This housing authority voiced support for the rule, but cautioned that, until the system ensures participation of all potential applicants and is bug-free, an alternative system must be available. This commenter recommended staggering the application process over a 12-month period, thus allowing for level user demand. The commenter further recommended that the electronic filing system should permit the uploading of files and not include a "bumping off" or "timing out" feature. The commenter also wrote that the system should have a process for verifying the receipt of applications and that HUD should provide adequate funding for housing authorities to purchase systems and browsers that are compatible with HUD's system.

HUD Response: As indicated in the proposed rule, consistent with the OMB directive, all applicants for HUD grants will be required to submit applications electronically, unless a waiver is granted. Access to *Grants.gov* requires only a computer with an Internet browser. In addition, the *Grants.gov* site does not require applicants to work online. Applicants download their application packages, work off-line, and

then upload the application and submit their applications via *Grants.gov*. This eliminates the time-out issues of concern to the commenter, as HUD is aware that development of an application for funding can take time. *Grants.gov* provides the applicant with a receipt and tracking number through the application submission process. Applicants receive notification when the application has been successfully submitted, received by *Grants.gov*, and validated by *Grants.gov*. HUD does not believe that staggering the application due dates, as recommended by the commenter, is necessary. HUD will provide *Grants.gov* with an estimated utilization rate so that adequate server and storage capacity is available at all times, especially anticipated application filing dates. Based upon HUD and other federal agency utilization in FY2005, *Grants.gov* has made a number of system upgrades, including increasing the number of servers, and installing a Secure Socket Layer (SSL) Accelerator and high capacity Storage Area Network (SAN) device to better handle traffic and increased storage volumes. In addition, the *Grants.gov* site has been segmented across various servers to ensure adequate capacity is available for submissions, downloads, and status checking. *Grants.gov* has also instituted several ways to track site utilization, patterns, and volumes on an hourly basis to provide early alert to increased needs. Therefore, HUD believes that the system is sized to accommodate a high volume of application submissions from a variety of federal and other agencies on a given date.

Comment: Application forms are not user-friendly and cannot be saved. The commenter wrote that her extensive experience in completing and being awarded various HUD grants would be jeopardized because she does not believe the system is ready for implementation.

HUD Response: Based on user surveys, *Grants.gov* has found that users of *Grants.gov* have found the Web site easy to use and navigate. A number of features facilitate the use of *Grants.gov*. At the present time, the *Grants.gov* application features some electronic forms developed in eXtensible Mark-Up Language (XML) using PureEdge™ software. The forms are designed to be user-friendly and incorporate embedded help tips to help applicants meet submission requirements. HUD has been working with *Grants.gov* to increase the number of HUD application forms available with this technology. Until all forms are created in XML, HUD will continue to make all forms, including those currently available in XML,

available in Adobe™ Portable Document Format (PDF). Application forms in PDF, in addition to those in Microsoft Word™ or Microsoft Excel™ format, can be saved and uploaded as part of an application submission to *Grants.gov*. HUD has provided users several ways to submit electronic files as part of their electronic application submission. In FY2005, the majority of HUD applicants found the PureEdge forms easy to use, save, and submit.

Comment: This housing authority applauds HUD's effort to centralize and streamline the application process. The commenter, however, urged HUD to establish an alternative plan and to put precautions in place to ensure that the system is not overwhelmed, thereby reducing its efficiency. The commenter further recommended that there should be separate submission paths for agencies previously screened by HUD. The commenter also requested more guidance on using the Central Contractor Registration (CCR) and *Grants.gov*.

HUD Response: As noted herein, *Grants.gov* is designed to provide for large numbers of users with large application submissions. The federal agencies are working with *Grants.gov* to ensure that the *Grants.gov* server capability can handle the number and size of applications expected for each application period. Given *Grants.gov's* record of accomplishment to date of having received over 15,000 applications electronically, HUD believes that the system will function as designed. In addition, the system upgrades described in this notice will prevent the system from being overwhelmed by the number of users or the number of separate applications posted by the federal agencies. The purpose of *Grants.gov* is to provide one portal, with similar requirements and consistent format for all users of federal financial assistance programs.

With regard to the other concerns raised by the commenter, HUD believes that adequate information is currently available on-line and through the *Grants.gov* Web site and its support help desk to assist applicants through the registration process. Applicants can go to www.Grants.gov/GetStarted and follow the step-by-step instructions on how to find and apply for funding opportunities, including instructions on how to obtain a DUNS number, register with the CCR, and register with an E-Authentication provider. *Grants.gov* Support offers customers assistance by calling 800-518-GRANTS or by sending an email to Support@Grants.gov. In addition, HUD has placed informational brochures and checklists on HUD's

Internet Grants page at <http://www.hud.gov/grants/index.cfm>, issued a notice in the **Federal Register** on December 9, 2005 (70 FR 273332), and published a brochure describing the steps in the registration process to assist applicants through the five-step registration process.

IV. Findings and Certifications

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 final rule does not impose any federal mandate on any state, local, or tribal government, or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

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

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule and in so doing, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Providing for electronic submission of grant applications will simplify and lessen the burden on applicants’ resources because they will no longer need to duplicate and submit paper applications.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1), this final 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. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and

moderate-income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 5 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

■ 2. Add § 5.1005 to Subpart K to read as follows:

§ 5.1005 Electronic submission of applications for grants and other financial assistance.

Applicants described under 24 CFR 5.1001 are required to submit electronic applications or plans for grants and other financial assistance in response to any application that HUD has placed on the www.grants.gov/Apply Web site or its successor. The HUD Assistant Secretary, General Deputy Assistant Secretary or, the individual authorized to perform duties and responsibilities of these positions, with authority over the specific program for which the waiver is sought, may in writing, waive the electronic submission requirement for an applicant on the basis of good cause.

Dated: December 21, 2005.

Roy A. Bernardi,

Deputy Secretary.

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