

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR-4870-P-01]

RIN 2502-A110

Revised Guidelines for Previous Participation Certification

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations to require all participants in HUD's Multifamily Housing Programs to file their Previous Participation Certificates by a specified date using the Active Partner Performance System on HUD's secure Internet site.

DATES: *Comment Due Date:* May 19, 2004.

ADDRESSES: Interested persons are invited to submit written comments regarding this rule to the Regulations Division, Office of 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. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: James E. Collins, Management Analyst, Housing Policy and Participation Standards Division, Office of the Deputy Assistant Secretary for Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone (202) 708-0614, extension 3279 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Previous Participation Certification process is to ensure that prospective participants in HUD's Multifamily Housing Programs have a history of carrying out their past financial, legal, and administrative obligations in a satisfactory and timely manner. The current system requires HUD's business partners that want to participate in multifamily housing

programs to file a paper Previous Participation Certificate using form HUD-2530 together with a description of all previous participation in multifamily programs every time they wish to do business with HUD.

II. This Proposed Rule

This proposed rule would amend 24 CFR 200.217(a) to require that filing by a specific date of the Previous Participation Certificate by participants in HUD's Multifamily Housing Programs be done electronically rather than by completing a paper form (form HUD-2530). The electronic filing will be accomplished by using a secure Internet-based application developed by HUD known as the Active Partner Performance System (APPS). The rule also specifies with more clarity transactions for which a principal or participant in HUD multifamily mortgage and project-based subsidy must complete an electronic Previous Participation Certificate.

APPS will provide participants with a secure environment within the HUD firewall where participants will record pertinent information about their specific relationship to any property. With the use of the APPS application, participants will be able to ensure that their individual records are complete, correct, and accurate at all times. APPS will provide participants with information about the physical condition of properties with which they are associated and will highlight any problems that may exist. Further, APPS will assist HUD in monitoring participants. APPS will allow HUD to maintain a history of participants, their various roles in property operations, and properties with which they are or were involved.

A clear benefit of using APPS is that risk assessment of a party's new or revised participation will occur faster, as paper is not required to be sent back and forth across the country. Risk information will be shared automatically with participants, which will make the issues resolution process more efficient.

III. Findings and Certifications

Justification for 30-Day Comment Period

HUD usually provides a 60-day period for the receipt of public comments when it issues a proposed rule. Notwithstanding that the provision for a 60-day public comment period is not a statutory requirement, HUD believes that where a rule provides for a shorter comment period than the usual 60 days, the rule should contain a justification to support the shorter period. In this

instance, the principal change to be effected by this rule would merely convert to an electronic format the recording of information that currently is obtained through a paper form. Since electronic filing has been used by participants for some time now, HUD believes that codifying the requirement for electronic filing as quickly as possible by, among other things, shortening the comment period would prejudice no one and make for a more efficient system.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

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 on the private sector. This rule does not impose a federal mandate on any state, local, or tribal government, or on 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. Notwithstanding HUD's determination that this rule would not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from

publishing any rule that has federalism implications if the rule either imposes 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 executive order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.117.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d)

2. Amend § 200.217 by revising paragraph (a) to read as follows:

§ 200.217 Filing of previous participation certificate on prescribed form.

(a) Effective [effective date of final rule to be inserted at publication of final

rule], or on such later date as may be allowed by HUD, all participants/principals in HUD multifamily mortgage and project based subsidy programs must submit an electronic Previous Participation Certificate (form HUD–2530) via HUD's secure web server as a condition prerequisite to new or revised participation. Prior to this date, participants are required to file form HUD–2530 as a condition prerequisite to new or revised participation. Filing requirements are as prescribed by the Assistant Secretary for Housing—Federal Housing Commissioner at the occurrence of any of the events below:

(1) With an Application for a Site Appraisal/Market Analysis Letter, Feasibility Letter, Conditional Commitment for Mortgage Insurance, or Firm Commitment for Mortgage Insurance, whichever application is first filed, for projects to be financed or refinanced with mortgages insured under the National Housing Act;

(2) With an Application for a Fund Reservation for projects financed or to be financed with direct loans or capital advances under section 202 of the Housing Act of 1959 (Housing for the Elderly and Handicapped);

(3) With an Application for a Fund Reservation for projects financed or to be financed with direct loans or capital advances under section 811 of the Cranston-Gonzales National Affordable Housing Act (Supportive Housing for Persons with Disabilities);

(4) With the first request for a reservation of funds for assistance payments for projects in which 20 percent or more of the units are to receive a subsidy described in § 200.213(c);

(5) With an Application for any Transfer of Physical Assets;

(6) With a request to assume any existing Housing Assistance Payments Contract, Interest Reduction Contract,

Rent Supplement Contract, or Rental Assistance Payments Contract;

(7) With a request to change ownership of a property regulated or controlled by a HUD “use agreement”;

(8) With an application or request to change the approved lessee operating a nursing home, assisted living, or skilled care facility;

(9) With a bid to purchase a project being sold at foreclosure by HUD or by a foreclosure commissioner acting for HUD, when the terms of the sale permit HUD to disapprove a bidder;

(10) With a bid to purchase a Secretary-owned project;

(11) With a bid to purchase a mortgage note held by the Commissioner;

(12) At least 30 days prior to the date of any proposed substitution or addition of a new participant or principal in an existing project, such as management agents, LLC members, directors, or partners, or proposed participation in a different capacity from that previously approved for the same project;

(13) At least 30 days prior to the proposed acquisition by an existing limited partner, stockholder, or any principal of additional interests resulting in a total interest of at least 25 percent (partners) or 10 percent (non-partners); or

(14) Certificates of participation must be submitted for interests acquired by any party or organization by inheritance or court decree within 30 days after said acquisition or decree, but will not be subject to review or disapproval.

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Dated: March 22, 2004.

Sean Cassidy,

General Deputy Assistant Secretary for Housing.

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