

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 5

[Docket No. FR-5054-P-01]

RIN 2501-AD20

### Independent Public Accountant Roster

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish a roster of approved independent public accountants and public accounting firms (IPAs) that would be permitted to perform audits or related services required by participants in certain HUD programs and submitted to HUD. The proposed rule would also establish eligibility, application, and removal procedures for IPAs listed on the IPA Roster. HUD believes this proposed rule would implement an additional protection to ensure the accuracy of financial data submitted to HUD by its program participants.

**DATES:** *Comment Due Date:* April 7, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule. There are two methods for comments to be submitted as public comments and to be included in the public comment docket for this rule. Additionally, all submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0001.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** The Office of Public and Indian Housing, Real Estate Assessment Center (REAC), Attention: Elizabeth Hanson, Deputy Assistant Secretary, Department of Housing and Urban Development, Office of Public and Indian Housing Real Estate Assessment Center, 550 12th Street, SW., Suite 100, Washington, DC 20410; telephone number (888) 245-4860 (this is a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339. Additional information is available from the PIH-REAC Internet site at <http://www.hud.gov/reac/>.

### SUPPLEMENTARY INFORMATION:

#### I. Background

HUD's regulations at 24 CFR part 5, subpart H (currently consisting of a single section, 24 CFR 5.801) establish uniform financial reporting standards for the Department's public housing, Section 8 housing, and insured housing programs. The uniform financial reporting standards apply to those entities or individuals identified in 24 CFR 5.801. They are: (1) Public housing agencies (PHAs); (2) owners of housing assisted under any Section 8 project-based housing assistance payments program; (3) owners of multifamily projects receiving HUD assistance or with mortgages insured, coinsured, or held by HUD; and (4) HUD-approved Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and nonsupervised loan correspondents (collectively referred to as "covered entities"). The uniform financial reporting standards require these entities or individuals to submit annual financial information electronically and in accordance with Generally Accepted Accounting Principles (GAAP). HUD

relies on this audited financial information to ensure the integrity of financial data submitted to HUD.

#### II. This Proposed Rule

For the financial information required of HUD program participants, as described in 24 CFR 5.801, HUD is proposing to establish an independent public accountant (IPA) roster (IPA Roster or Roster) and to provide eligibility, application, and removal procedures for the IPA Roster. The quality and accuracy of financial data submitted to HUD begins with selecting qualified IPAs who agree to comply with HUD's requirements with respect to the provision of audits or related services. The IPA Roster would list IPAs that have been approved to perform audits or related services for covered entities. IPAs include individuals employed by public accounting firms (including a solo practice) or a State Auditor's Office who are licensed by a regulatory authority of a State or other political subdivision of the United States both before and after December 31, 1970. IPAs also include certified public accountants. As proposed, covered entities or individuals would be required to select an IPA that is listed on the IPA Roster for their particular jurisdiction to perform the audits or related services required by HUD. Any IPA seeking to perform audits or related services for the entities or individuals noted above would be required to be a listed IPA sole practitioner, be a member or partner of a listed IPA, or be a full-time employee of a listed IPA.

It is important to note, however, that while HUD is committed to improving the quality and accuracy of the financial information submitted to it, the inclusion of an IPA on the IPA Roster would not create or imply any warranty or endorsement by HUD of a listed IPA to the entities listed in 24 CFR 5.801, or to any other organization or individual user of the resulting audited financial statements. Nor would such inclusion represent a warranty of the specific audits or related services performed by a listed IPA. Such inclusion would mean only that the IPA has met the qualifications and conditions prescribed by the Secretary for placement on the IPA Roster.

#### A. IPA Roster Placement Procedure

This proposed rule would establish the requirements for listing on the IPA Roster. In order to be placed on the IPA Roster, each IPA would be required to submit an application to HUD identifying the specific state(s), territory(ies), Commonwealth(s), or District of the United States in which

the IPA wishes to be considered for listing, HUD would review each IPA's application to ensure that each requirement for eligibility is met for each of the specific jurisdictions in which the IPA has requested to be considered for listing. If HUD's review of an IPA's application demonstrates that the IPA is eligible in a particular jurisdiction, the IPA's name would be placed on the IPA Roster for that jurisdiction. If HUD denies the IPA's application, the IPA can request reconsideration, and the IPA would have 30 days in which to demonstrate that it was in fact eligible as of the date of its initial application. Should the IPA not be able to demonstrate eligibility as of the date of the IPA's application, the IPA would not be listed, but could reapply at any time in the future.

To be eligible for listing on the IPA Roster, an IPA would be required to:

1. Be licensed or authorized to practice in each of the specific jurisdictions for which the IPA is to be listed;
2. Not be, nor employ or contract with anyone for the performance of audits or related services who is, suspended, debarred, voluntarily excluded, subject to a limited denial of participation, or subject to any order of disbarment or other denial of right to practice before the Securities and Exchange Commission, or subject to a jurisdiction's disciplinary action that has resulted in the revocation, suspension, or surrender of a license or authorization to practice public accounting;
3. Agree to accept only those engagements for audits or related services where it meets the minimum qualifications specified by the Generally Accepted Government Auditing Standards (GAGAS);
4. Agree to accept engagements for only those entities listed in 24 CFR 5.801 that are located in jurisdictions in which the IPA is listed;
5. Agree to establish and implement quality control procedures sufficient to satisfy the quality control standards of GAGAS;
6. Agree to comply with the professional standards applicable to any audit or related service performed;
7. Agree to comply with any accountancy laws and rules of each jurisdiction for which the IPA is to be listed;
8. Agree to comply with all applicable HUD rules and instructions relating to financial reporting, audits, and related services performed for the entities listed in 24 CFR 5.801;
9. Agree to submit to and cooperate with reviews by HUD of the IPA's

performance of audits or related services for those entities listed in 24 CFR 5.801;

10. Agree to notify HUD if the IPA or any member or employee of the firm is, or has been, within the previous 5 years, indicted or otherwise charged with or convicted of any offense listed in 24 CFR 24.800(a);

11. Agree to notify HUD if the IPA or any member or employee of the firm is, or has been, within the previous 5 years, adjudged to be civilly liable for any of the offenses listed in 24 CFR 24.800(a); and

12. Agree to comply with any requests for information made by HUD. The IPA would be required to comply with all agreements required to be listed on the IPA Roster immediately upon approval for such listing.

#### *B. Responsibilities of Listed IPAs*

An IPA who is eligible to perform audits or related services, and who is engaged by a covered entity or entities, has a contractual responsibility to those entities. Furthermore, the IPA also has a responsibility to HUD, whenever a covered entity or entities for which the IPA provides audits or related services are required to submit those audits to HUD. Therefore, IPAs listed on the IPA roster will be responsible for: (1) Complying with any agreements with HUD immediately upon their approval for listing on the IPA Roster and continually thereafter, including, but not limited to, agreements required for listing on the IPA Roster; (2) maintaining compliance with any other eligibility requirements for listing on the IPA Roster for each jurisdiction in which they are listed; and (3) notifying HUD within 30 days of any change in their continued compliance with eligibility requirements.

#### *C. IPA Roster Removal Procedure*

In order to safeguard the continued quality and accuracy of the audits and related services performed by listed IPAs and, ultimately, the integrity of the financial data submitted to HUD, this proposed rule would establish a removal process by which the listed IPAs may be removed from the IPA Roster. Removal of an IPA from the IPA Roster would not preclude HUD or the federal government from also bringing a false claims action, taking action against an IPA under 24 CFR part 24 ("Government Debarment and Suspension and Governmentwide Requirements for Drug-Free Workplace (Grants)"), or from seeking any other remedy against an IPA available to HUD or the federal government by statute or otherwise.

This proposed rule would allow HUD to remove an IPA from the IPA Roster who fails to fulfill its responsibilities as a listed IPA, for cause at any time. Cause for removal would include, but would not be limited to: (1) Failing to comply with any agreements with HUD, including, but not limited to, agreements identified at proposed new 24 CFR 5.810(a) as requirements for eligibility; (2) failing to maintain compliance with any other eligibility requirements for listing on the IPA Roster for each jurisdiction in which the IPA is listed; (3) failing to notify HUD within 30 days of any change in their continued compliance with eligibility requirements; or (4) making, or causing to be made, any false certification to HUD.

In certain circumstances described below, the proposed rule would require the automatic removal of an IPA from the IPA Roster, while in other circumstances the proposed rule would provide the IPA with an opportunity to respond and attend a conference before the IPA's removal from the IPA Roster. The proposed rule would require the automatic removal of an IPA from the IPA Roster: (1) When the IPA fails to maintain compliance with eligibility requirements by being debarred, suspended, voluntarily excluded, subject to a limited denial of participation, or subject to any order of disbarment or other denial of right to practice before the Securities and Exchange Commission; or (2) when the IPA fails to maintain compliance with eligibility requirements by losing, whether by revocation, suspension, surrender, or other means, its license or authorization to practice in any particular jurisdiction. However, if the IPA's license or authorization to practice lapsed or expired for reasons other than disciplinary actions, the IPA would be removed from the IPA Roster only for that specific jurisdiction. Under any of these automatic removal circumstances, the procedures for contestable removal set forth in 24 CFR 5.814(d) would not be applicable.

Except in the above cases of automatic removals, the removal procedures proposed by this rule would require HUD to give an IPA written notice of the proposed removal from the IPA Roster. Such notice would include the reasons for the proposed removal. The IPA would then be given 30 calendar days from the date of the removal notice to submit a written response opposing the removal. During this period, the IPA would also have the ability to submit a written request for a conference to discuss the proposed removal. If the IPA does not submit a response opposing the

proposed removal within 30 calendar days, the removal would become effective 30 calendar days after the date of HUD's initial removal notice.

If the IPA opposes the proposed removal, the Deputy Assistant Secretary of the Real Estate Assessment Center (REAC), or a designee ("Reviewing Official"), would: (1) Review the proposed removal notice along with any supporting information and the response to the notice; and (2) conduct the conference with the IPA, if requested, before making a determination as to whether the IPA should be removed from the IPA Roster. When a request for a conference is received, the Reviewing Official would schedule the conference within 30 calendar days of the date the request is received. The Reviewing Official would be required to issue a determination within 30 calendar days of receiving the IPA's written response, or, if a conference is requested, within 30 calendar days of the closing of the conference. The Reviewing Official may affirm or deny the IPA's proposed removal from the IPA Roster, or the Reviewing Official may find cause for removal but order the removal held in abeyance. In no instance would the Reviewing Official be the individual who made the initial determination to propose the IPA's removal from the IPA Roster.

The removal of the IPA would become effective on the date of HUD's notice affirming its initial removal decision. When the IPA's removal is held in abeyance, the effective date of the IPA's removal would be set for a date specified in the future to allow the IPA to demonstrate that all causes for removal have been eliminated. If the IPA successfully demonstrates that all causes for removal have been eliminated, the order of termination would be withdrawn; however, if the IPA fails to demonstrate that all causes for removal have been eliminated, the IPA would be removed from the IPA Roster as of the effective date listed in the order of abeyance.

Where HUD is considering the removal of an IPA who has, during the previous 3 years, performed audits or related services for covered entities covered by this rule, HUD will endeavor to ascertain whether those covered entities receive funds from other federal agencies. Where HUD determines that the IPA has performed audits or related services for covered entities receiving federal funds from other agencies, HUD will notify the agencies providing such funding prior to taking any removal action.

#### *D. Effect of Removal From IPA Roster*

An IPA who has been removed from the IPA Roster would not be permitted to enter into any contract or engagement for audits or related services with covered entities. While the IPA would be permitted to continue performance under any contract or engagement in effect at the time of the removal, the IPA would not be permitted to extend or renew any contract or engagement, with the exception of no-cost time extensions, unless the Reviewing Official were to grant an exception. The granting of any such exception would be within the sole discretion of the Reviewing Official and would be granted only when determined to be in the interest of HUD. Additionally, nothing in this rule would affect an entity's discretion to terminate an existing contract or engagement as a result of the IPA's removal, or due to the circumstances precipitating such removal.

### **III. Implementation of This Rule and Cost Benefits of the Rule**

To ensure that IPAs affected by this rule have adequate time to register with HUD, HUD plans to delay, at the final rule stage, the implementation date of this rule for a period of 12 months following publication of the final rule. During this phase-in period, HUD plans to undertake outreach to covered entities and IPAs that have registered for a unique IPA identifier (UII) under the existing Uniform Financial Reporting Standards (UFRS) regulation of the transition to the new requirements that provide for listing on the IPA Roster. HUD intends to undertake such outreach utilizing email notifications, website postings, mailings, system messages, presentations at industry conferences and seminars, press releases, and, to the extent necessary, targeted phone calls, to ensure that all IPAs registered under existing regulations, and other interested IPAs, are aware of this new rule. HUD intends to begin its outreach efforts by ensuring that IPAs and covered entities are notified of this proposed rule, when published. HUD plans to increase these efforts following the publication of the final rule, continuing through the one-year phase-in period following publication of the final rule. Thirty days prior to the expiration of the phase-in period, HUD plans to contact all IPAs registered with HUD under the current UFRS regulation and all covered entities notifying them of the expiration of the phase-in period and reminding them of the approaching implementation date of the IPA Roster regulation. HUD has set

a goal of receiving applications from 90 percent of currently registered IPAs during the phase-in period.

Upon the implementation date of the final IPA Roster rule, the UIIs of IPAs registered under the existing UFRS regulation that have failed to seek and obtain approval for listing on the IPA Roster will be deactivated. Any IPA whose UII has been deactivated remains able to apply for placement on the IPA Roster, in accordance with the procedures of any final IPA Roster rule.

HUD recognizes the costs, in terms of time and resources, that will be committed to the implementation of an IPA Roster rule. However, the Department believes that the benefits to both the Department and the entities covered by this rule far outweigh any costs associated with an IPA Roster rule. Specifically, if adopted, the IPA Roster rule would provide the Department a significant measure of confidence that the audits being submitted to it have been performed by licensed IPAs in accordance with professional standards. Audits are a critical management tool for both the federal government and the recipients of federal funding, and it is essential to the effective oversight and monitoring of billions of federal dollars that these audits be performed properly.

At this time, the Department does not have the ability to verify that IPAs are licensed or competent before an IPA is engaged to perform a covered service. Once implemented, the IPA Roster rule would provide the Department with a tool to ensure that those auditors being engaged to perform work for covered entities are, at a minimum, licensed in the jurisdictions in which they are performing those covered services and are willing to perform the covered services in accordance with professional standards.

Additionally, the remedies currently available to the Department to address unlicensed or unprofessional auditors are the costly and very time-consuming actions for debarment or suspension. In the Department's experience, such actions are generally complex and technical, and require an excessive amount of time and resources to prosecute. Once implemented, the IPA Roster rule would result in significant savings of departmental enforcement resources by enabling the Department to take action in a timely and efficient manner if it identifies an IPA that is not performing in accordance with established auditing standards or the provisions of the IPA Roster rule. Thus, the Department believes that the improved oversight of federal funds and program performance resulting from this rule, along with the time and monetary

savings associated with enforcement actions against IPAs, justify the establishment of this roster.

HUD recognizes that this proposed rule, which would establish a roster of approved independent public accountants and public accounting firms, is an innovative method to attempt to improve the quality of the audits submitted to HUD and improve HUD's oversight of federal funds and program performance. Establishing such a roster would also be unique to the federal government. For these reasons, HUD encourages the public to submit comments on the potential effectiveness of the rule and on the general concept of establishing a roster of approved independent public accountants and public accounting firms as a means to improve the quality of the audit of federal funds and program performance.

#### IV. Small Business Concerns Related to Independent Public Accountant Roster

In creating and maintaining the IPA Roster, or in taking action to remove a listed IPA, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (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 or 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 that are provided to small business 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], you will find the necessary comment forms at [www.sba.gov.ombudsman](http://www.sba.gov.ombudsman) or call 1-888-REG-FAIR (1-888-734-3247).

As HUD stated in its notice describing HUD's actions on the implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD will 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.

#### V. Findings and Certifications

##### Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under

Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file 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, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at (202) 708-3055.

##### Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must be received within 60 days from the date of this rule. The burden of the information collections in this proposed rule is estimated as follows:

#### REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
24 CFR 5.812 .....	7,137	1	1	7,137

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information

collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number FR-5054-P-01 and must be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395-6974, and Directives Management Officer, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh

Street, SW., Room 4116, Washington, DC 20410–8000.

#### *Environmental Impact*

This proposed rule establishes placement and removal procedures for HUD's IPA Roster. 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 proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule establishes the procedure by which an IPA who has violated professional auditing or other HUD requirements may be removed from HUD's IPA Roster. Accordingly, to the extent that this proposed rule impacts small entities, it is as a result of actions taken by small entities themselves; that is, violation of professional auditing, HUD, or other requirements. The proposed rule provides several procedural safeguards designed to minimize any potential impact on small entities. For example, the rule grants IPAs selected for removal from the IPA Roster with the opportunity to provide a written response and to request a conference regarding a proposed removal. The rule also specifies that the official designated by HUD to review an appeal may not be the same HUD official involved in the initial removal decision.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments from all entities, including small entities, regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires federal agencies

to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandate on any state, local, or tribal governments, or on the private sector within the meaning of UMRA.

#### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or that 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 or preempt state law within the meaning of the Executive Order.

#### **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 compensation; Wages.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 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), unless otherwise noted.

2. Add new §§ 5.802, 5.804, 5.806, 5.808, 5.810, 5.812, 5.814, 5.816, 5.818, and 5.820 to read as follows:

##### **§ 5.802 Definitions.**

The following definitions apply to this subpart:

*Audit(s) or related service(s).* Any audit, attestation, compilation, review, or other service that an IPA is required to perform in accordance with those financial reporting standards described in § 5.801.

*Covered entity(ies).* Public housing agencies; contract administrators;

owners; and Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents that are subject to the requirements of 24 CFR 5.801, for which HUD is the cognizant or oversight agency under the Single Audit Act Amendments of 1996.

*Independent Public Accountant (IPA).*

An accountant is an individual employed by a public accounting firm (including a solo practice) or a State Auditor's Office, and licensed by a regulatory authority of a State or other political subdivision of the United States both before and after December 31, 1970. All certified public accountants are considered to be independent public accountants.

*Jurisdiction.* Any State, territory, Commonwealth, or District of the United States.

*Professional standards.* (1) Accounting principles that are:

(i) Established by the Government Accounting Standards Board or Generally Accepted Accounting Principles (GAAP), as applicable;

(ii) Established by the Office of

Management and Budget (OMB);

(iii) Established by HUD; or

(iv) Applicable to audit reports for particular covered entities or covered by the quality control system of a particular IPA listed on the IPA Roster.

(2) *Auditing standards.* Standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards that are issued or adopted by:

(i) The American Institute of Certified Public Accountants (Generally Accepted Auditing Standards (GAAS));

(ii) The Government Accountability Office (Generally Accepted Government Auditing Standards (GAGAS));

(iii) The Office of Management and Budget (OMB Circular A–133); or

(iv) HUD.

#### **§ 5.804 The Independent Public Accountant Roster (IPA Roster).**

(a) *Independent Public Accountant Roster.* HUD maintains a roster of independent public accountants and public accounting firms (IPAs) who are approved to perform audits or related services in specified jurisdictions for those entities that are required to submit audited financial statements to HUD under this subpart, and for which HUD is the cognizant or oversight agency under the Single Audit Act Amendments of 1996.

(b) *Disclaimer.* The inclusion of an IPA on the IPA Roster does not create or imply any warranty or endorsement to any organization or individual, including any other potential user of the

audited financial statements, by HUD of a listed IPA, nor does it represent a warranty of any audits or related services performed by the listed IPA. The inclusion of an IPA on the IPA Roster means only that the IPA has met the qualifications and conditions, prescribed in this part, for inclusion on the IPA Roster.

**§ 5.806 Responsibilities of an IPA listed on the IPA Roster.**

An IPA listed on the IPA Roster is responsible for:

- (a) Complying with any agreements with HUD, including, but not limited to, agreements identified at § 5.810(a);
- (b) Maintaining any other eligibility requirements and compliance for each state or jurisdiction in which the IPA is listed;
- (c) Notifying HUD within 30 days of any change in the continued compliance of the IPA with eligibility requirements; and
- (d) Not making, or causing to be made, any false certifications to HUD.

**§ 5.808 Applicability of IPA Roster.**

(a) Any IPA that seeks to perform audits or related services in a particular jurisdiction for covered entities must be listed on the IPA Roster for that state or jurisdiction.

(b) When the IPA wishes to perform audits or related services for covered entities with offices in numerous jurisdictions, the IPA need only be listed in the jurisdiction in which the covered entity maintains its headquarters.

(c) Every IPA that is engaged to perform audits or related services, or who contracts with an IPA to perform any portion of audits or related services, must be listed on the IPA Roster individually or be an employee or member of an auditing firm listed on the IPA Roster.

**§ 5.810 Eligibility requirements for placement on the IPA Roster.**

To be eligible for placement on the IPA Roster:

- (a) Public accounting firms and State Auditor's Offices must:
  - (1) Be licensed or authorized to practice in each of the specific jurisdiction(s) for which the IPA is to be listed;
  - (2) Not be, or employ or contract with anyone for the performance of audits or related services who is: suspended, debarred, voluntarily excluded, subject to a limited denial of participation, or subject to any order of disbarment or other denial of right to practice before the Securities and Exchange Commission, or subject to a

jurisdiction's disciplinary action that has resulted in the revocation, suspension, or surrender of a license or authorization to practice public accounting;

(3) Agree upon approval for placement on the IPA Roster, to comply with the following to maintain placement on the IPA Roster:

- (i) Accept only those engagements for audits or related services that meet the minimum qualifications specified by the Generally Accepted Government Auditing Standards (GAGAS);
- (ii) In servicing covered entities, accept only those engagements for audits or related services for covered entities located in jurisdictions in which the IPA is listed on the IPA Roster;
- (iii) Establish and implement quality control procedures sufficient to satisfy the quality control standards of GAGAS;
- (iv) Comply with the professional standards applicable to any audits or related services performed for covered entities;
- (v) Comply with any accountancy laws and rules of each jurisdiction for which the IPA is to be listed;
- (vi) Comply with all applicable HUD rules and instructions relating to financial reporting, audits, or related services;
- (vii) Submit to and cooperate with reviews by HUD of the IPA's performance of audits or related services for covered entities;
- (viii) Notify HUD if the IPA or any member or employee of the firm is, or has been within the previous 5 years, indicted or otherwise charged with or convicted of any offense listed in 24 CFR 24.800(a);
- (ix) Notify HUD if the IPA or any member or employee of the firm is, or has been within the previous 5 years, adjudged to be civilly liable for any of the offenses listed in 24 CFR 24.800(a); and

(x) Comply with any requests for information made by HUD.

(b) Individual public accountants that wish to be listed on the IPA Roster must either:

- (1) Meet the eligibility requirements specified in § 5.810(a); or
- (2) Be a partner or member of a public accounting firm listed on the IPA Roster, or be a full-time employee of such a firm.

**§ 5.812 IPA Roster Placement Procedures.**

(a) *Application.* An IPA seeking to be listed on the IPA Roster must submit an application to HUD. The application must specifically identify each jurisdiction in which the IPA seeks to be listed, and must demonstrate that the IPA meets the eligibility requirements

described in § 5.810 for listing in each such jurisdiction. The application must be in a form, and delivered in a manner, prescribed by HUD.

(b) *Approval for listing on the IPA Roster.* Once received by HUD, the application will be reviewed and a decision issued within 45 days of HUD's receipt of the application, unless HUD extends this time by providing notice to the IPA.

(1) *Approval.* If HUD determines that the IPA meets the eligibility requirements described in § 5.810 for listing in a particular jurisdiction, the IPA will be listed on the IPA Roster for that particular jurisdiction.

(2) *Denial.* If the IPA fails to demonstrate that it meets all the eligibility requirements described in § 5.810, the application will be denied.

(i) If a denial of the application is issued, the IPA will be notified of the reasons for the denial and will be given 30 days from the date of the denial to request reconsideration and demonstrate that the IPA did meet all eligibility requirements for listing in a particular jurisdiction at the time of the initial application.

(ii) If the IPA demonstrates that it did meet all eligibility requirements for listing in a particular jurisdiction at the time of the initial application, the IPA will be listed on the IPA Roster for that particular jurisdiction.

(iii) If the IPA fails to demonstrate that it met all eligibility requirements, the denial of the application is final and the IPA will be required to submit a new application to be considered for future placement on the IPA Roster.

**§ 5.814 IPA Roster Removal Procedures.**

(a) *Removal from the IPA Roster.*

(1) An IPA may be voluntarily removed from the IPA Roster by notifying the Department in writing, and specifying from which jurisdiction(s) the IPA wishes to be removed.

(2) An IPA that fails to fulfill its responsibilities as a listed IPA is subject to involuntary removal from the IPA Roster.

(b) *Involuntary automatic removal.* HUD may automatically remove an IPA from the IPA Roster for all applicable jurisdictions, without the benefit of a conference or other opportunity to respond, if the IPA:

- (1) Fails to maintain compliance with eligibility requirements by being debarred, suspended, voluntarily excluded, subject to a limited denial of participation, or subject to any order of disbarment or other denial of right to practice before the Securities and Exchange Commission;

(2) Fails to maintain compliance with eligibility requirements by incurring a jurisdiction's disciplinary action that results in the revocation, suspension, or surrender of a license or authorization to practice; or

(3) Fails to maintain compliance with eligibility requirements by allowing licensing or authorization to practice to expire, not due to jurisdiction disciplinary action in any jurisdiction for which the IPA is listed on the IPA Roster.

(4) Automatic removal of an IPA from the IPA Roster for any jurisdiction will constitute automatic removal from the IPA Rosters for all jurisdictions. However, automatic removal under paragraph (b)(3) of this section for failure to maintain licensing or authorization constitutes removal for only the jurisdictions in which the IPA has allowed its licensing or authorization to practice to lapse, and does not affect the listing of the IPA on the IPA Roster for any other jurisdiction in which the IPA remains eligible.

(c) *Causes for contestable removal.* Causes for contestable removal include, but are not limited to:

(1) Failing to comply with any agreements with HUD, including, but not limited to, agreements identified at § 5.810(a);

(2) Failing to maintain compliance with any other eligibility requirements for listing on the IPA Roster for each jurisdiction in which the IPA is listed;

(3) Failing to notify HUD within 30 days of any change in the continued compliance of the IPA with eligibility requirements; or

(4) Making, or causing to be made, any false certification to HUD.

(d) *Procedure for contestable removal.* Unless an IPA is subject to automatic removal from the IPA Roster under paragraph (b) of this section, the following procedures apply:

(1) HUD will provide the IPA with written notice of the proposed removal from the IPA Roster. The notice of proposed removal will include the reasons for the proposed removal of the IPA from the IPA Roster.

(2) The IPA has 30 calendar days from the date of the notice of proposed removal to submit a written response objecting to the proposed removal and/or requesting a conference. If an IPA submits a timely written objection to the proposed removal, the Deputy Assistant Secretary of the Departmental Real Estate Assessment Center (REAC) or a designee ("Reviewing Official"), will review the proposed removal and the IPA objection, and conduct a conference with the IPA, if requested. When a request for a conference is received, the

Reviewing Official will schedule the conference within 30 calendar days of the date the request is received. In no instance will the Reviewing Official be the same individual who made the initial determination to propose removal of the IPA from the IPA Roster.

(3) The Reviewing Official will issue a determination within 30 days of receiving the IPA's written response, or, if a conference is requested, within 30 days of the closing of the conference. The Reviewing Official may extend the time for issuance of a final decision by providing the IPA with notice.

(4) The Reviewing Official may affirm or deny the proposed removal from the IPA Roster, or the Reviewing Official may, in his or her sole discretion, find cause for the removal but order that the removal be held in abeyance pending further action.

(e) *Removal held in abeyance.* (1) When the Reviewing Official has determined that cause for removal exists, the Reviewing Official may, instead, in his or her sole discretion, issue an order of abeyance, deferring the removal of the IPA from the IPA Roster until a future date specified in the order of abeyance.

(2) The order of abeyance provides the IPA with the opportunity to demonstrate to the satisfaction of the Reviewing Official that all causes for the removal have been addressed prior to the effective date for removal specified in the order of abeyance.

(3) The Reviewing Official shall consider any relevant evidence submitted by an IPA as of the date specified in the order of abeyance, to determine whether all causes for removal have been addressed. Upon request by the IPA, the Reviewing Official, in his or her discretion, may review such evidence at any time prior to the date specified in the order of abeyance.

(f) *Other action.* Nothing in this subpart prohibits HUD or the federal government from taking such other action against an IPA as provided under 24 CFR part 24, or from seeking any other remedy against an IPA available to HUD or the federal government by statute or otherwise.

(g) *Effective dates of removal from the IPA Roster.* (1) Unless an IPA is subject to automatic removal from the IPA Roster under paragraph (b) of this section, the following effective dates apply.

(i) If the IPA does not submit a written response within 30 calendar days of the date of the notice of proposed removal, the removal becomes effective 30 calendar days after the date of HUD's removal notice.

(ii) If the IPA submits a written response within 30 calendar days of the date of the notice of proposed removal, and the removal decision is affirmed, the effective date of the removal is the date of HUD's notice affirming its initial removal decision.

(2) If the IPA is subject to automatic removal, the removal is effective as of the date the IPA receives notice of the removal.

(3) If the removal is held in abeyance, the order of abeyance will specify the effective date of the removal, which will be effective should the IPA fail to demonstrate to the satisfaction of the Reviewing Official that all causes for the removal have been eliminated by the effective date.

(h) *Notification of other federal agencies.* Where HUD is considering the removal of an IPA who has, during the previous 3 years, performed audits or related services for a covered entity, HUD will endeavor to ascertain whether any audited covered entity receives funds from any other federal agency. Where HUD determines that the IPA has performed audits or related services for a covered entity receiving federal funds from another agency, HUD will notify that agency prior to taking any removal action against the IPA.

#### **§ 5.816 Consequences of removal from the IPA Roster.**

(a) If an IPA is removed from the IPA Roster, the IPA can no longer be engaged to perform audits or related services for covered entities.

(b) If the IPA is currently engaged to perform audits or related services for covered entities, the IPA is not prohibited from completing those contracts or engagements. However, the IPA may not renew or extend (other than no-cost time extensions) any contract or engagement, unless the Reviewing Official grants an exception. The granting of any such exception lies within the sole discretion of the Reviewing Official and will be granted only when the Reviewing Official determines that an exception is in the interest of HUD.

(c) HUD's action to remove an IPA from the IPA Roster does not affect the ability of covered entities to, in their discretion, terminate an existing contract or engagement as a result of the removal of the IPA from the IPA Roster or the circumstances precipitating the removal of the IPA.

#### **§ 5.818 Consequences of a removal action that is held in abeyance.**

(a) If the IPA demonstrates, to the satisfaction of the Reviewing Official, that all causes for removal have been

eliminated within the specified time period before the effective date of the removal, the removal action against the IPA will be terminated and the IPA will remain listed on the IPA Roster, subject to continued eligibility.

(b) If the IPA fails to demonstrate elimination of all causes for removal, to the satisfaction of the Reviewing Official, before the effective date, the IPA will be removed from the IPA Roster as of the effective date.

**§ 5.820 Reinstatement to the IPA Roster.**

(a) *Reinstatement.* Except as specified in paragraph (b) of this section, an IPA may request reinstatement of its listing on the IPA Roster no earlier than one

year following the effective date of the removal from the IPA Roster.

(1) The request for reinstatement must contain all the information and comply with all the requirements for initial application for placement on the IPA Roster.

(2) The IPA must submit a written explanation of the circumstances surrounding the removal from the IPA Roster.

(3) The IPA must submit documentation demonstrating that all causes resulting in the removal from the IPA Roster have been eliminated.

(b) *Reinstatement following automatic removal due to expiration of license or*

*authorization to practice.* If the IPA has been automatically removed due to the expiration of licensing or authorization to practice in a jurisdiction, not due to disciplinary action, the IPA may request reinstatement and be reinstated at any time by submitting evidence demonstrating the renewal of licensing or authorization to practice in that particular jurisdiction.

Dated: January 7, 2008.

**Roy A. Bernardi,**

*Deputy Secretary.*

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