

Rules and Regulations

Federal Register

Vol. 76, No. 145

Thursday, July 28, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

2 CFR Part 2429

24 CFR Parts 5, 21, 84, 1000

[Docket No. FR-5471-F-01]

RIN 2501-AD54

Implementation of Office of Management and Budget Guidance on Drug-Free Workplace Requirements

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: HUD is moving its regulation implementing the governmentwide common rule on drug-free workplace requirements for financial assistance from one title in the Code of Federal Regulations (CFR) to another title. This relocation of the requirements from one CFR title to another responds to directions from the Office of Management and Budget (OMB) to all federal agencies to consolidate into one CFR title all federal regulations on drug-free workplace requirements for financial assistance. These changes constitute an administrative simplification and make no substantive change in HUD policy or procedures for drug-free workplace.

DATES: *Effective Date:* August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 3156, Washington, DC 20410-0500, telephone number 202-708-0667. (This is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) (41 U.S.C. 701 *et seq.*) (the Act) was enacted on November 18, 1988, as part of the 1988 Omnibus Drug Act. The Act requires that recipients of grants and parties to cooperative agreements provide a drug-free workplace. On January 31, 1989 (53 FR 4946), the federal agencies issued an interim final common rule to implement the Act as it applies to grants. On May 25, 1990 (55 FR 21681), after considering public comment, the federal agencies issued a final common rule.

On January 23, 2002 (67 FR 3266), the federal agencies proposed substantive changes to the governmentwide Debarment and Suspension (Nonprocurement) and governmentwide Requirements for Drug-Free Workplace (Grants) common rule. HUD did not join in the January 23, 2002, publication, but proposed adopting the common rule amendments by separate rule, that was published on July 22, 2002 (67 FR 48006). On November 26, 2003 (68 FR 66534), after considering public comment on the January 23, 2002, common rule and, after HUD considered public comment on its July 22, 2002, proposed rule, the federal agencies, including HUD, published a final rule that updated the common rule on drug-free workplace requirements. Each agency at that time also relocated its drug-free workplace common rule to its own CFR part and removed the drug-free workplace rule from a subpart in the debarment and suspension common rule. HUD's drug-free workplace common rule was moved to 24 CFR part 21.

On May 11, 2004 (69 FR 26276), OMB established Title 2 of the CFR as the new, central location for OMB guidance and agency implementing regulations concerning grants and cooperative agreements. With the establishment of Title 2 of the CFR, OMB announced its intention to replace agencies' common rules with a single set of drug-free workplace requirements, policies, and procedures, referred to as OMB guidance. Through this approach, rather than have each agency issue identical or nearly identical rules based on the common rule, agencies would adopt the OMB guidance through brief regulations that reference the agencies' adoption of the guidance. The establishment of Title

2 of the CFR is intended to assist recipients that do business with multiple federal agencies by creating one title in which recipients can find the agencies' regulations implementing governmentwide requirements governing grants and cooperative agreements that were previously published under many separate CFR titles. OMB began the process of replacing common rules with its guidance by proposing, and later finalizing, governmentwide guidance on nonprocurement suspension and debarment enforcement actions in 2 CFR part 180.

On September 26, 2008 (73 FR 55776), OMB proposed guidance for drug-free workplace requirements in a new CFR part—2 CFR part 182. In addition to proposing the guidance for drug-free workplace requirements, OMB also proposed the format and organizational structure of the requirements that agencies should adopt. The guidance was issued in final form on June 15, 2009 (74 FR 28149). The final guidance directs that each federal agency replace the common rule on drug-free workplace requirements, which the agency previously issued in its own CFR title, with a brief regulation in 2 CFR adopting the governmentwide drug-free workplace policies and procedures.

II. This Final Rule

As the OMB guidance requires, HUD is taking two regulatory actions by this final rule. First, HUD is removing the OMB common rule on drug-free workplace requirements which includes some revisions particular to HUD that are currently codified at 24 CFR part 21. Second, to replace the common rule, HUD is promulgating a new regulation at 2 CFR part 2429 to adopt the governmentwide policies and procedures on drug-free workplaces that are now in the OMB guidance. This rule does not make any substantive changes in the governmentwide drug-free workplace policies and procedures, but rather simply relocates HUD's drug-free workplace requirements to a central location in 2 CFR 2429, and highlights the commonality of these requirements among federal agencies by cross-referencing to OMB's guidance.

III. Findings and Certifications

Justification for Final Rule

HUD generally publishes regulatory changes for public comment before issuing them for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. HUD does provide, however, in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is “impracticable, unnecessary, or contrary to the public interest.” In this case, the Department finds that delaying the effective date of this rule in order to solicit prior public comment is unnecessary.

As described in the “Background” section of this preamble, this rule is directed to a CFR “housekeeping” matter which is moving HUD’s governmentwide regulations applicable to drug-free workplace requirements to a new title in the CFR and in streamlined form, as directed by OMB. This rule makes no substantive changes to the drug-free workplace policies and procedures, as currently codified in regulation, and which have been proposed for comment three times and adopted after resolution of the comments received. Since no substantive changes are made by this rule, and the rule would not affect current application and enforcement of drug-free workplace requirements, no public comment is necessary.

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and it was not reviewed by OMB. The rule responds to OMB’s streamlining direction with respect to drug-free workplace requirements for federal financial assistance, and adds HUD’s requirements to those of other federal agencies that are consolidated in one title of the CFR. This rule is solely an administrative simplification that

Regulatory Flexibility Act

The Regulatory Flexibility Act (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. Because no advance notice of proposed rulemaking is required pursuant to 5 U.S.C. 553(b)

for this rule, which moves a set of regulations, without change, from one CFR title to another, the provisions of the Regulatory Flexibility Act do not apply.

Environmental Impact

This rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and HUD regulations at 24 CFR 50.19(c)(1).

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule 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 relevant requirements of section 6 of the Executive 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 Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (12 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 final rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

List of Subjects

2 CFR Part 2429

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

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.

24 CFR Part 21

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

24 CFR Part 84

Accounting, Colleges and universities, Grant programs, Hospitals, Non-profit organizations, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, and under the authority of 5 U.S.C. 301, HUD amends the Code of Federal Regulation, Title 2, Subtitle B, chapter XXIV, and Title 24 CFR parts 5, 21, 84 and 1000, as follows:

Title 2—Grants and Agreements

- 1. Add new part 2429 in Subtitle B, Chapter XXIV, to read as follows:

PART 2429—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

- 2429.10 What does this part do?
- 2429.20 Does this part apply to me?
- 2429.30 What policies and procedures must I follow?

Subpart A—[Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

- 2429.225 Whom in HUD does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients Who Are Individuals

- 2429.300 Whom in HUD does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

- 2429.400 What method do I use as an agency awarding official to obtain a recipient’s agreement to comply with the OMB guidance?

Subpart E—Violations of This Part and Consequences

- 2429.500 Who in HUD determines that a recipient other than an individual violated the requirements of this part?
- 2429.505 Who in HUD determines that a recipient who is an individual violated the requirements of this part?

Subpart F—[Reserved]

Authority: 41 U.S.C. 701–707; 42 U.S.C. 3535(d).

§ 2429.10 What does this part do?

This part requires that the award and administration of HUD grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707) (referred to as the Act in this part) that applies to grants. This part:

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for HUD grants and cooperative agreements; and

(b) Establishes HUD policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for governmentwide implementing regulations.

§ 2429.20 Does this part apply to me?

This part, and through this part, pertinent portions of the OMB guidance in subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a:

(a) Recipient of a HUD grant or cooperative agreement; or

(b) HUD awarding official.

§ 2429.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures of the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 182.225(a)	§ 2429.225	Whom in HUD must a recipient other than an individual notify if an employee is convicted for a violation of a criminal drug statute in the workplace?
(2) 2 CFR 182.300(b)	§ 2429.300	Whom in HUD must a recipient who is an individual notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity?
(3) 2 CFR 182.500	§ 2429.500	Who in HUD is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part?
(4) 2 CFR 182.505	§ 2429.505	Who in HUD is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part?

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, HUD policies and procedures are the same as those in the OMB guidance.

Subpart A—[Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§ 2429.225 Whom in HUD does a recipient other than an individual notify about a criminal conviction?

A recipient other than an individual who is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each HUD office with which it currently has an award.

Subpart C—Requirements for Recipients Who Are Individuals

§ 2429.300 Whom in HUD does a recipient who is an individual notify about a criminal conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each HUD office with which he or she currently has an award.

Subpart D—Responsibilities of Agency Awarding Officials

§ 2429.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of part 2429, which adopts the governmentwide implementation (2 CFR part 182) of sections 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

Subpart E—Violations of This Part and Consequences

§ 2429.500 Who in HUD determines that a recipient other than an individual violated the requirements of this part?

The Secretary or designee is the official authorized to make the determination under 2 CFR 182.500.

§ 2429.505 Who in HUD determines that a recipient who is an individual violated the requirements of this part?

The Secretary or designee is the official authorized to make the determination under 2 CFR 182.505.

Subpart F—[Reserved]

Title 24—Housing and Urban Development

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 2. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d).

■ 3. Revise § 5.105(d) to read as follows:

§ 5.105 Other Federal requirements.

* * * * *

(d) *Drug-free workplace.* The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations at 2 CFR part 2429.

PART 21—[REMOVED]

■ 5. Remove Part 21.

PART 84—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

The authority citation for part 84 continues to read as follows:

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

- 7. Revise § 84.13(b) to read as follows:

§ 84.13 Debarment and suspension; Drug-Free Workplace.

* * * * *

(b) Recipients and subrecipients shall comply with the requirements of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*), as set forth at 2 CFR part 2429.

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

- 9. Revise § 1000.46 to read as follows:

§ 1000.46 Do drug-free workplace requirements apply?

Yes. In addition to any tribal requirements, the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations in 2 CFR part 2429 apply.

Dated: July 15, 2011.

Shaun Donovan,
Secretary.

[FR Doc. 2011-19129 Filed 7-27-11; 8:45 am]

BILLING CODE 4210-67-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1080

[Docket No. CFPB-2011-0007]

RIN 3170-AA03

Rules Relating to Investigations

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (“CFPB” or “Bureau”), pursuant to the Consumer Financial Protection Act of 2010, is adopting its Rules Relating to Investigations in order to describe the Bureau's procedures for investigations pursuant to section 1052 of the Act. The Bureau invites interested members of

the public to submit written comments to this interim final rule setting forth those rules.

DATES: This interim final rule is effective on July 28, 2011. Written comments must be received on or before September 26, 2011.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB-2011-0007*, by any of the following methods:

- **Electronic:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail or Hand Delivery/Courier in Lieu of Mail:** Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1801 L Street, NW., Washington, DC 20036, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036, (202) 435-7275.

SUPPLEMENTARY INFORMATION: This discussion contains the following sections:

- (a) Background
- (b) Section-by-Section Summary
- (c) Procedural Requirements

(a) Background

The Bureau is adopting Rules Relating to Investigations (“Rules”) that implement provisions of the Consumer Financial Protection Act of 2010 (“Act”)¹ that relate to the Bureau's

¹ The Act is Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended, Public Law 111-203 (July 21, 2010), Title X, 12 U.S.C. 5481 *et seq.* Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury publishes these Rules on behalf of the CFPB.

investigations. Specifically, these Rules will govern investigations undertaken pursuant to section 1052 of the Act, 12 U.S.C. 5562, which authorizes the Bureau to investigate whether persons have engaged in conduct that violates any provision of Federal consumer financial law.

In developing these Rules, the Bureau considered the investigative procedures of other law enforcement agencies. Specifically, the Bureau reviewed the procedures currently used by the Federal Trade Commission (“FTC”), the Securities and Exchange Commission (“SEC”), and the prudential regulators for guidance. In light of the similarities between section 1052 of the Act and section 20 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 41 *et seq.*, the Bureau drew most heavily from the FTC's nonadjudicative procedures in constructing the Rules.

The Rules describe a number of Bureau policies and procedures that apply in a nonadjudicative setting. Among other things, these Rules set forth (1) the Bureau's authority to conduct investigations, and (2) the rights of persons from whom the Bureau seeks to compel information in investigations.

In particular, the Rules lay out the Bureau's authority to conduct investigations before instituting judicial or administrative adjudicatory proceedings under Federal consumer financial law. The Rules authorize the Assistant Director of the Division of Enforcement to issue civil investigative demands for documentary material, tangible things, written reports or answers to questions, and oral testimony, which may be enforced in district court by either the General Counsel or the Assistant Director of the Division of Enforcement. The Rules also detail the authority of the Bureau's investigators to conduct investigations and hold investigational hearings pursuant to civil investigative demands for oral testimony.

Furthermore, the Rules set forth the rights of persons from whom the Bureau seeks to compel information in an investigation. Specifically, the Rules describe how such persons should be notified of the purpose of the Bureau's investigation. The Rules detail the procedures for filing a petition for an order modifying or setting aside a civil investigative demand, which will be ruled upon by the Bureau Director. They also describe the process for obtaining copies of or access to documents or testimony provided to the Bureau. In addition, the Rules describe a person's right to counsel at investigational hearings.