

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 2004

[Docket No. FR-4742-F-02]

RIN 2508-AA13

### Office of Inspector General Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities

**AGENCY:** Office of Inspector General, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations of the Office of Inspector General (OIG) to implement the statutory requirements concerning the issuance of OIG subpoenas, and responses to subpoenas issued to OIG employees in proceedings where OIG is not a party. This final rule follows publication of a proposed rule on September 20, 2002. No public comments were received in response to the proposed rule. Accordingly, the Department is adopting the proposed rule without change.

**DATES:** Effective Date: February 24, 2003.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

#### I. Background—The September 20, 2002 Proposed Rule

On September 20, 2002 (67 FR 59428), HUD published a proposed rule to amend the regulations of the HUD/OIG by updating the regulations in 24 CFR part 2004. The proposed rule provided that the Inspector General would delegate to the Counsel to the Inspector General the authority and responsibility for responding to requests and demands for production of OIG records and testimony of OIG employees (§ 2004.20). The proposed rule also identified the factors that OIG would consider in making determinations in response to such requests and what information requesters must provide (§§ 2004.21 and 2004.22). The proposed rule further specified when the request should be submitted (§ 2004.22), the time period for review (§ 2004.24), potential fees

(§ 2004.29), and, if a request is granted, any restrictions that may be placed on the disclosure of records or the appearance of an OIG employee as a witness (§§ 2004.26 and 2004.27). The proposed rule also indicated that the charges for witnesses are the same as those provided by the federal courts. Additionally, the rule explained that the fees related to production of records are the same as those charged under OIG's Freedom of Information Act regulation at 24 CFR part 2002. The rule further advised that the proposed charges for time spent by an employee to prepare for testimony and for production of records by OIG are authorized under 31 U.S.C. 9701. Under 31 U.S.C. 9701, an agency may charge for services or things of value that are provided by the agency.

#### II. This Final Rule

This final rule follows publication of the September 20, 2002, proposed rule, which invited public comment on the rule. The public comment period closed on November 19, 2002, with the Department's receiving no comments on the proposed rule. Accordingly, the Department is adopting the proposed rule without change.

#### III. Findings and Certifications

##### *Environmental Review*

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. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321).

##### *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 the private sector. This final rule would not impose a federal mandate that will result in expenditures by state, local, or tribal governments and 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. Although HUD has determined that this final rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes 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 (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and would 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 2004

Administrative practice and procedure, courts.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 2004 to read as follows:

#### PART 2004—SUBPOENAS AND PRODUCTION IN RESPONSE TO SUBPOENAS OR DEMANDS OF COURTS OR OTHER AUTHORITIES

1. Part 2004 is revised to read as follows:

##### Subpart A—General Requirements

Sec.

- 2004.1 Scope and purpose.
- 2004.2 Applicability.
- 2004.3 Definitions.

##### Subpart B—Office of Inspector General Subpoenas

- 2004.10 Service of an Office of Inspector General subpoena.

##### Subpart C—Requests for Testimony and Production of Documents

- 2004.20 General prohibition.
- 2004.21 Factors OIG will consider.
- 2004.22 Filing requirements for demands or requests for documents or testimony.
- 2004.23 Service of subpoenas or requests.
- 2004.24 Processing demands or requests.
- 2004.25 Final determination.