



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
ADMINISTRATION**

**Special Attention of
Directives Management Officers**

**TRANSMITTAL for Handbook No. 000.2 REV-3
Issued March 2012**

1. This transmits: A revised handbook 000.2 REV- 3, HUD Directives System.
2. Summary: This handbook has been revised to update policies, procedures, and staff positions.
3. Filing instructions:

Remove:

Handbook 000.2 REV-2 dated
4/2001

Insert:

Handbook 0002.REV-3, dated 3/2012

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Introduction to Directives Handbook

Directives are communications relaying important information or guidance about HUD programs, policy, or operations. Directives are addressed to HUD's constituents and/or HUD employees. These communications are issued under the authority of the Secretary and Deputy Secretary, even though individual directives generally are not approved by the Secretary or Deputy Secretary prior to issuance (as is currently the case with rules and certain other Federal Register publications). Because directives generally do not require Secretary or Deputy Secretary approval prior to issuance, it is imperative to clear directives within the Department to ensure coordination with existing policy, compliance with other HUD or federal actions, and consistency with Administration positions, as applicable.

Directives generally supplement or elaborate upon existing regulatory or statutory requirements that pertain to HUD programs or operations. Directives generally do not implement new binding requirements on HUD's constituents unless there is an underlying statutory or regulatory authority as the basis for a directive containing such requirements. Directives generally guide the reader toward enhanced understanding of and compliance with the subject matter of the guidance.

Directives include documents such as handbooks, mortgagee letters, and notices, but may also be other forms of communications (for example, email blasts) that provide information or guidance. The stakeholders to whom directives are issued include public housing agencies (PHAs), states, local jurisdictions, multifamily owners, lenders, and HUD employees.

HUD directives are different than Federal Register (FR) publications. The Federal Register is a vehicle through which new rules, binding policy, or revised rules and policies are announced. Items that require publication in the Federal Register are prescribed by statutes, including the Administrative Procedures Act or, at times, by executive order. The process for clearing Federal Register publications is managed by the Office of Legislation and Regulations in the Office of the General Counsel (OGC).

The Office of the Chief Human Capital Officer (OCHCO), together with representatives of key HUD offices, has authored this Directives Handbook to assist HUD staff in understanding what constitutes directives and how directives are drafted and formatted, how the departmental clearance process for directives works, and how governing authorities relate to directives.

Section A: HUD's Directives Management System

A-1 Authority: HUD's directives management system is maintained pursuant to section 3(a) of the Department of Housing and Urban Development Act (42 U.S.C. 3532(a)), and in compliance with 44 U.S.C. Chapter 29 (Record Management by the Archivist of the United States and by the Administrator of General Services), as implemented by the regulations of the National Archives and Record Administration (NARA) at 36 CFR part 1222. The system reflects the authority of HUD's Secretary to supervise the agency's administration. This handbook documents the requirements and procedures established by HUD for the development, issuance, and maintenance of directives. Oversight of, and waivers from, this handbook are administered by OCHCO.

A-2 Definition of directive: HUD directives primarily supplement statutes, regulations, and HUD or Administration policies to provide practical guidance on how to comply with these legal authorities and policies. For example, HUD issued guidance to HUD constituents on compliance with provisions of the American Recovery and Reinvestment Act that are applicable to HUD programs. In addition, HUD's Funds Control handbook provides guidance to HUD employees on management of HUD funds to ensure compliance with federal financial management systems requirements. Both of these types of guidance constitute directives.

Directives that supplement regulations must be consistent with regulations, and not establish new requirements for which a regulation does not provide a foundation for the establishment of requirements outside the regulation. A regulation may, for example, provide for a supplemental document (directive) to establish more detailed paperwork or reporting requirements, but directives are not intended, for example, to establish new eligibility requirements for a program or other significant program requirements that are intended to be binding on program participants or regulated entities, unless, again, the underlying regulation or statute provides the authority to do so. (Note: Directives are enforceable with respect to any requirements that HUD imposes on itself.) These requirements must be established through rulemaking. The line between rules and guidance is not always clear. OGC provides assistance to help distinguish between rules and guidance. See <http://hudweb.hud.gov/po/c/regsindex.cfm>.

In some cases, statutes leave no discretion to HUD to establish new binding policy or new or revised binding requirements. Statutes are categorized as self-implementing or self-executing, which means that regulations are not necessary for purposes of effectiveness, implementation, or compliance. For statutes, generally, the only regulations that may be needed are conforming regulations; that is to bring the regulations up-to-date with the language of the statute. In such cases, directives may be helpful in announcing to affected program participants that a new statute has been enacted and is operational.

A-3 Objectives: The HUD Directives Handbook is designed to ensure that:

1. Officials and employees administering HUD programs have accurate, complete, and concise instructions on procedures for communicating program policies, whether communicated to the public or internally;
2. HUD constituents have clear, instructive, and helpful information to comply with the applicable requirements and procedures for HUD programs;
3. The content, organization, and format of directives allows for information to be easily located, understood, and used;
4. Directives are kept current, include accurate information essential to program delivery, and are canceled when no longer useful;
5. Directives do not contradict other HUD policies or serve cross-purposes that could confuse the user's ability to comply with federal requirements;
6. HUD directives are developed, cleared, and issued in accordance with all applicable legal authorities and in accordance with this handbook; and
7. HUD directives meet the requirements of the Plain Writing Act of 2010. See <http://www.plainlanguage.gov/pILaw/index.cfm>.

A-4 HUD agency responsibilities: The Chief Human Capital Officer (CHCO), or a CHCO designee, holds lead responsibility for oversight of the HUD directives management system, including compliance with this handbook and exceptions hereto. Four categories of HUD officials hold various levels of responsibilities, starting with HUD's Secretary and concluding with the directives management officer (DMO) for each HUD office:

1. Secretary or Deputy Secretary:
 - a. Approves directives issued by the Secretary's Office;
 - b. Issues major policy and/or procedural guidance that pertains to the Department's overall mission; and
 - c. Resolves irreconcilable differences among Assistant Secretaries concerning proposed directives.
2. Assistant secretaries, office heads, or equivalent HUD Principals (hereafter "HUD Principals") including, but not limited to, the Inspector General, President of the Government National Mortgage Association, General Counsel, Chief Operating Officer,

Chief Financial Officer, Chief Information Officer, Chief Procurement Officer, Chief Disaster and Emergency Management Officer, and Directors of the Center for Faith-Based and Neighborhood Partnerships, Office of Healthy Homes and Lead Hazard Control (OHHLHC), Office of Strategic Planning and Management, Office of Sustainable Housing and Communities, Office of Small and Disadvantaged Business Utilization, Office of Departmental Equal Employment Opportunity, and Office of Departmental Operations and Coordination:

- a. Ensures compliance with this handbook, arranging for staff training as needed;
- b. Appoints a DMO (and alternate), whose duties include, but are not limited to, those described herein;
- c. Approves directives originated by their offices;
- d. Ensures basic agreement within the office of the HUD Principal before a new directive originated by that Principal enters departmental clearance. Such prior office-based clearance is established under procedures appropriate for that office and the type of directive (Note: only the Secretary or Deputy Secretary may exempt an individual HUD Principal from compliance with this handbook, either on a case-by-case basis or across-the-board);
- e. Certify, by signing form HUD-22, Departmental Clearance and Approval Record, that:
 - 1) A Front-End Risk Analysis (pursuant to Handbook 1840.1), if applicable, is prepared or is in the process of development;
 - 2) Materials have been submitted to the Office of Management and Budget (OMB), when required, in accordance with the Paperwork Reduction Act or as may be required by an executive order or by OMB;
 - 3) When applicable, an environmental assessment concludes with a Finding of No Significant Impact (FONSI) or that an Environmental Impact Statement (EIS) has either been completed or is required;
 - 4) Impacts to small entities may require certification under section 605 of the Regulatory Flexibility Act (RFA); and
 - 5) Unfunded federal mandates are identified.
- f. Ensure that directives originated by their office are cleared in accordance with this handbook. Minimum clearance requires concurrence by the Office of General Counsel (OGC), the Office of the Chief Financial Officer (OCFO), the Office of the Chief Information Officer (OCIO), the Office of Inspector General (OIG), the Office of Policy Development and Research (PD&R), the Office of the Chief Human Capital Officer (OCHCO), and additional HUD offices based on the subject matter of the directive;

- g. Identify officials to whom redelegated authority is assigned for execution of HUD-22 forms and other clearance actions on behalf of a HUD Principal; and
 - h. Elevate to the Deputy Secretary resolution of nonconcurrences on policy that were not satisfactorily addressed at the HUD Principal level.
3. The Chief Human Capital Officer redelegates to the Director of the Office of Facilities Management Services (OFMS) authority to:
- a. Assign a departmental DMO (DDMO) to coordinate, monitor, and report on directives activities;
 - b. Advise program offices on requirements of the directives management system, as mandated by this handbook and approve exceptions on a case-by-case basis;
 - c. Maintain a list of DMOs and officials with redelegated authority to sign HUD-22 forms and circulate the list as updates occur;
 - d. Prepare periodic reports on the age of directives, performance by offices in updating directives, timeliness of clearance, use of interim notices, and other directive management provisions;
 - e. Control subject classification numbers and assign office codes within the directives management system;
 - f. Monitor HUD directives through a central tracking system;
 - g. Ensure that each HUD Principal maintains an index of directives; and
 - h. Bring to the CHCO's attention serious handbook violations and/or consistent patterns of noncompliance by offices for remedial action referred to the Assistant Secretary of the offending office or to the Secretary and Deputy Secretary.
4. DMOs as designated by a HUD Principal for each program office shall:
- a. Serve as the point of contact within their office on matters relating to directives;
 - b. Maintain internal clearance procedures to ensure adequate and timely clearance of directives originating within their office or received for review from other offices;
 - c. Ensure office directives conform with system requirements, including requirements for currency, format, plain English, and appropriateness;
 - d. Coordinate graphics, printing, reproduction, and distribution of directives;

- e. Provide technical assistance within their office on directives, to include:
 - 1) Interpreting the application of the directive requirements;
 - 2) Helping originators of directives plan, develop, and coordinate their office directives;
 - 3) Determining appropriate clearance offices; and
 - 4) Assisting in the resolution of nonconcurrences or elevating the matter to the next level of authority for resolution.
- f. Maintain a historical record file of directives originated by their respective offices;
- g. Maintain a master file of pending directives originated by their office, as well as directives from other offices in departmental clearance;
- h. Report problems within the directives management system to the departmental DMO DDMO, including violations or nonuse of the system, and report data for the directives management system; and
- i. Provide an electronic copy of issued directives to the DDMO and to HUDclips managers for publication and distribution.

A-5 HUDclips as the electronic repository of directives and forms: HUD maintains an automated repository of directives and forms available to HUD staff, stakeholders, and the general public consistent with the Presidential Memorandum Electronic Government dated, December 17, 1999.

OCHCO maintains this searchable, on-line database formally entitled HUD Client Information and Policy System and referred to as HUDclips. This or any successor system contains the entire inventory of official HUD policies, including notices, mortgagee letters, handbooks, guidebooks, and forms. Once a directive completes clearance, and is executed by the appropriate HUD Principal, an electronic copy is forwarded to the DDMO and HUDclips managers by the appropriate office DMO. Additionally, a hard copy of each executed directive is sent, if the directive contains graphics or other material that cannot be transmitted electronically.

Section B: Types of Directives

What constitutes a directive is not necessarily the title of a specific type of communication, but the content. The two broad types of directives subject to the requirements of this handbook are communications to the public and communications internal to HUD.

B-1 Public communications: These are communications that are *for the first time* relaying guidance to program participants or regulated parties beyond merely explaining provisions of existing HUD policy or requirements in statutes and regulations. They constitute a HUD directive, regardless of the title of the document.

Whatever the form of pronouncement, announcement, restatement, or interpretation to be made to the public about HUD statutes, regulations, or significant policy, such communication must first be cleared by offices with the appropriate policy and legal authority before it is released to the public.

Frequently asked questions (FAQs) and their corresponding answers that convey legal or policy interpretations *for the first time* require clearance. Information issued by HUD offices to program constituents that merely present information about access to HUD systems, identify HUD points of contact, or repeat information already cleared (with no further changes) are not subject to the HUD directives management system. However, certain processing information that impose new reporting and recordkeeping require compliance with the Paperwork Reduction Act (PRA) under the responsibility of the Chief Information Officer, and the PRA process includes clearance.

When in Doubt, Check it Out. If an office is uncertain whether a form of communication constitutes a directive, OCHCO and OGC's Office of Legislation and Regulations are available to assist in making that determination.

B-2 Internal communications: These are communications that affect HUD-wide operations, that may or may not result in impacts to HUD constituents. For example, a written explanation of what constitutes permissible work-time volunteer activities for HUD employees is an internal communication that requires clearance. A handbook that pertains to operations internal to a particular HUD office may require clearance, if such operations impact another HUD office or its programs.

Guidance on processing notices of funding availability (NOFA) requires clearance because these directions impact outside interests seeking federal financial assistance. The guidance is cleared to ensure that it is consistent with the NOFA, the HUD Reform Act, and other applicable statutes and regulations.

B-3 Nondirective communications: Directives do not include legal opinions, settlement agreements, interagency agreements, memoranda of understanding, grant agreements, procurement documents, or (e.g., bid proposals, requests for proposals, statements of work, contracts), memoranda from HUD Principals to their employees on matters that do not have cross-program impacts. Congressional correspondence, congressional testimony, press releases, communications to other federal agencies, or responses to audits of HUD’s Office of Inspector General or the Government Accountability Office (GAO) are also not directives. Communications issued by the Government National Mortgage Corporation (Ginnie Mae) to issuers, servicers, and related contractors are also not directives. These communications are contractual in nature because they govern the relationship between Ginnie Mae and the issuers, servicers, and related contractors involved in Ginnie Mae’s guarantee of mortgage-backed securities. These communications include changes to the Mortgage-Backed Securities Guide, All Participants Memoranda (APMs), and Multiclass Participants Memoranda (MPMs).

Studies or reports such as those prepared by PD&R or OHHLHC containing scientific, statistical, or technical data do not constitute directives but must still be cleared in accordance with the Information Quality Act and HUD’s Information Quality Guidelines.

B-4 Handbooks and guidebooks: The objective of a handbook is to serve as a comprehensive document of current and applicable information on a specific HUD program and may include clarification of policies, instructions, guidance, procedures, forms, and reports. Handbooks are directed to HUD staff and/or program participants, are generally divided into chapters, and are issued in a format that allows for the insertion of changes over time.

Guidebooks were previously distinguished from a handbook in that guidebooks were not to communicate directions, instructions, or processing information. The distinctions between the two types of comprehensive documents are no longer applicable. The document entitled “Programs of HUD” is defined as a guidebook, yet still contains instructions on how to seek federal financial assistance.

Handbook Changes: These are changes to an existing handbook when the changes appear on less than half of the existing number of pages of the handbook and only these select pages are updated. Once more than half of a handbook’s pages are new or revised, the entire handbook is replaced as a revision. That said, even if less than half the pages are impacted, a revision of the entire handbook may be cleared.

Handbook Revisions: This refers to a complete replacement of a handbook that cancels and supersedes the previously issued version. A revision is required when more than half of the handbook pages are new or contain revisions, regardless of the time passed during the various changes.

Handbook Transmittals: This refers to a signed statement issued with a handbook, revision, change, or cancellation that summarizes the significant matters covered in the directive. A handbook transmittal must include, if applicable, a list of all prior mortgage letters that have been incorporated and/or superseded by a new or revised handbook.

B-5 Notices: Notices are used to give instructions or guidance about aspects of HUD programs that generally supplement statutes or regulations. For example, guidance to program participants on how HUD's regulations govern equal treatment of faith-based organizations or on how an administrative provision in an appropriations act is implemented is typically released to the public in the form of a notice. Again, a notice is based on a preceding statute or regulation and does not impose new, binding requirements, unless, the preceding statute or regulation so permits.

Notices remain effective until amended, superseded, or rescinded. *However*, all notices must display the date of issuance and state that the notice remains in effect until amended, superseded, or rescinded. Additionally, if a notice amends or supersedes a prior notice, identification of the prior notice appears on the first page. If notices include a specific expiration date, the expiration date is identified on the first page.

Mortgagee Letters are a specific type of notice issued on the letterhead of the Federal Housing Commissioner to FHA-approved mortgagees. Notices of the Offices of CPD, Housing, and PIH are also a type of notice generally addressed to entities subject to regulations administered by those offices. Section C presents format requirements for notices.

B-6 Protocols: Protocols are internal directions or instructions to HUD employees regarding how to implement certain activities. An example is the protocol for interacting with GAO developed by Office of the Chief Financial Officer, dated August 11, 2006, and posted at: <http://hudatwork.hud.gov/pol/cl/gaoguidanceocfoandogc8112006.pdf>.

Section C: Content and Formatting Standards

Content and formatting standards for directives provide a logical and consistent structure for users to locate information quickly and fully. Plain, clear language is used to achieve the directive's objectives.

C-1 Content preparation: Communications that constitute directives, as defined by this handbook, are created and cleared electronically, even if the subsequent communication is to be distributed electronically through email or website posting. Electronic communications include the ability to incorporate hyperlinks or tags, which are electronic tools that link to other documents or source materials.

Directives do not use the terms “shall”, “must”, “required”, “requirement,” or other mandatory prescription or present a course of conduct intended as an enforceable action, unless, the directive cites a statutory or regulatory source or other explicit authority to impose a binding requirement through a nonrule document. Directives may impose an information collection or recordkeeping requirement, if approved by OMB, and an OMB approval number is cited.

C-2 Handbook formats: Handbooks are to include:

1. A table of contents, if the handbook contains more than 20 paragraphs;
2. A list of forms and/or reports required by the handbook, provided on a separate page following the table of contents;
3. A consistent outline format throughout the document;
4. A classification number assigned by the DDMO;
5. An Office number as a sequential identifier following the DDMO classification;
6. An effective date shown on each page;
7. A transmittal signed by the HUD Principal with the same DDMO classification and office number; and
8. Appendices with the effective date, DDMO subject classification and office number shown on each page, if applicable.

To present changes to a handbook, identify the revised chapters, sections, paragraphs, and/or pages in the table of contents with the effective date of the change. On each page containing a change, indicate “changed on date shown as xx/xx/xxxx” immediately adjacent to the page number. When more than half of the pages of a handbook are changed, a complete revision of the document is required, including showing a revision date on each page. Program offices may elect to clear a complete revision even if less than half the pages are changed, so as to avoid the requirement to mark changes.

To cancel an obsolete handbook, the originating organization prepares a form HUD-23 to transmit to the DDMO and clear with offices having responsibilities affected by the canceled handbook, that in turn ensures that references to the canceled handbook are removed from other handbooks by the respective DMO.

C-3 Notice formats: Notices are to include:

1. A banner using form HUD-21-B that identifies the parties to whom the notice is addressed, a title for the notice; office number; telephone number; room number; applicable cross-references, if any; date of issuance, date of expiration; or a statement that the notice remains in effect until amended, superseded, or rescinded. If a notice amends or supersedes a prior notice, identify the prior notice in the banner;
2. Text presenting the purpose, background, and guidance in clear, plain language with acronyms spelled out and defined at first use;
3. Identification of all OMB approval numbers for recordkeeping or information collections required by the notice;
4. Contact information for further information or assistance, identifying a contact person or office by name and email; and
5. Signature of the HUD Principal. Original signatures are maintained by the originating offices with electronic postings showing execution as “/s/”. Do not include the signature symbol while the notice is in departmental clearance.

Section D: Clearance

Since the majority of HUD directives are communications to HUD constituents or the public generally, these communications are publicly posted and therefore publicly available documents. As such, they not only reflect the views or policy positions of the individual HUD Principal who authorized the issuance, but will be seen by the public and other branches of the government as reflecting the views and position of the Secretary and Deputy Secretary of HUD, respectively. Departmental clearance is necessary and important to ensure requisite agreement by applicable HUD leadership on the subject matter and content of the directive; review by HUD offices with expertise, policy or legal, with the subject matter of the directive; and no conflict with other HUD policy or Administration policy.

Departmental clearance also must be undertaken for directives that are intended to be issued or posted in draft for public comment before issuance in final form. Posting in draft form for public comment will indicate to the public that, although in draft, the policy and legal positions in the draft form are accurate and reflect the direction that the Department is interested in pursuing. However, the public cannot be assured that draft directives will indeed be pursued, unless, the draft is approved through departmental clearance.

OCHCO has lead responsibility for ensuring compliance with the directives management system. The OGC Office of Legislation and Regulations manages departmental clearance for Federal Register publications. The difference between a directive and FR publication is presented in the introduction.

NOFAs offer competitive funds to constituent applicants. Each year, a comprehensive set of requirements, known as the General Section, are developed presenting administration policy requirements applicable to all NOFAs. Each program office, in turn, adds its unique requirements within individual NOFAs, which, in turn, are cleared through the Department. This clearance process is managed by the Office of Departmental Grants Management and Oversight (ODGMO), including the scheduling of NOFA transmittals to OMB and the subsequent public posting on grants.gov, and a FR announcement. Clearance of NOFAs starts with the program office preparing an original and redlined revision of their prior year's NOFA, if applicable, for clearance distribution.

D-1 Originating HUD Office – Initial Responsibilities: The originating HUD office is the HUD office charged with creating and implementing a specific directive, places a directive into departmental clearance by satisfying the following four steps:

1. Intra-office agreement: Clearance of directives through the various divisions of the originating office is at the discretion of the HUD Principal. If such preclearance or intra-agency clearance is undertaken, it is in accordance with established and consistent procedures set by the respective HUD Principal. The DMO for each office oversees both the intra-office and departmental clearance processes and ensures adherence to deadlines and documented approvals. Before departmental clearance begins, the originating office ensures basic intra-office agreement.
2. Execute HUD-22: Ensure that each section of the Departmental Clearance and Approval Record is completed, including the sections pertaining to: type of clearance, proposed distribution, and the appropriate compliance sections pertaining to front-end risk assessments, information collection, environmental impact, impact to small entities, and unfunded federal mandates. The form HUD-22 is signed by the originating HUD Principal or Principal's designee, thereby authorizing placement of the directive into departmental clearance. An Assistant Secretary may delegate clearance authority to, but not below, an office director within HUD Headquarters.
3. Launch clearance: Submit to appropriate and mandatory reviewing offices by email to DMOs with the HUD-22 and directive attached. Clear the entire proposed text of the directive, including applicable forms, appendices, or other materials to be issued with the directive. Advise the originating office of the directive, the contact person, and the comment deadline in both the HUD-22 and the body of the email presenting the departmental clearance. Where forms are being substantially revised, but not necessarily relate to a directive, the program office should use the directive process to announce substantive changes to forms. Forms often contain substantive instructions to program participants or contain policy guidance and, therefore, they should undergo the vetting process applicable to directives.
4. Manage clearance: Ensure access to the directive by all appropriate reviewing offices. If clearance cannot be completed electronically, allow access to the directive and the opportunity to review and respond without encountering technical problems. If clearance is conducted electronically through email or another computer-based system, but the originating office requires an original signed form HUD-22 from reviewing offices, the originating office must inform reviewing offices of this requirement. Otherwise, scanned copies of the HUD-22 with the signature of the reviewing office's HUD Principal in a PDF format is an acceptable response.

Each HUD Principal establishes appropriate procedures for an internal clearance process to review directives from other program offices. Authority for clearance may be redelegated to a subordinate Principal. It is the responsibility of the respective DMO for each office to ensure that a single response is returned to the originating office by the deadline clearly identifying the response selected among the options provided on the HUD-22, and in accordance with Section D-3.3.

Each DMO ensures the single response is clear and coherent without conflicting views or comments from multiple internal divisions within the reviewing office. Multiple offices and divisions within a reviewing office submit clearance comments to their respective DMO and not to the DMO of the originating HUD office. The requirement for intra-office coordination ensures that reviews by more than one division within a reviewing office are privy to potential impacts contained in directives in clearance.

HUD Principals are to ensure understanding by managers and directive reviewers regarding the time constraints within clearance, and to support discussions between reviewing and originating offices before a nonconcur is submitted to the originating office. If nonconcurrences are registered, appropriate staff are to be made available for resolution.

Such resolution may include a meeting assembled by the originating office with the office or offices that have nonconcurred to discuss and strive to reach acceptable resolution to the nonconcurring comments without triggering nonconcurrency concerns by the offices that have concurred, however. This meeting is often referred to as a “drop-dead meeting.” If nonconcurrency comments (and/or significant comments under a technical concur-with-comment) are not resolved at the appropriate staff level, the conflict is elevated to the Assistant Secretary level. Should resolution fail at this level, the matter is elevated to HUD’s Deputy Secretary.

Both the originating and reviewing offices are responsible for meeting the clearance deadline set by the originating office and identified on the HUD-22.

D-2 Originating HUD Office – Additional Responsibilities: In addition to the four steps (to secure intra-office agreement, execute HUD-22, launch clearance and manage clearance), the office originating a directive holds responsibility to:

1. Secure preclearance agreements: In addition to securing intra-office agreement, originating offices endeavor to secure basic legal and policy agreements during the development of a directive. Assigned counsel for each program office reviews a proposed directive for basic legal sufficiency. Review by program counsel includes coordination with OGC’s Office of Legislation and Regulations to ensure that a proposed directive does not require rulemaking or other form of FR publication. Both the originating office and OGC share responsibility to ascertain potential cross-program impacts within a proposed directive, and to invite cross-cutting program reviews before clearance.

The need for early legal and policy reviews is paramount for major new initiatives. Clearance should not be used as the first process to vet new policy initiatives; otherwise, the process is overburdened with offices nonconcurring on cross-program impacts. Instead, originating offices are encouraged to use the option to establish

policy vetting teams (PVTs) to meet once or regularly in order to review a proposed directive. PVTs may also be created for rulemaking and/or the development of other FR publications. To the extent that time permits, basic agreements from program counsel and other prospective reviewers is obtained on major new initiatives, program areas, or procedures during the drafting of a proposed directive.

Preclearance agreement is equally important for directives impacting field operations. Field office managers and staff hold direct experience in implementing policy through local constituents. Headquarters program offices pre-clear policy initiatives and/or changes through field offices in order to garner operational input. Methods for preclearance may include, but are not limited to, conference calls; email or SharePoint transmittals of draft directives; and direct requests for field staff to draft specific sections of directives, when appropriate.

2. Present revisions: If a particular directive was previously cleared and/or publicly distributed, but subsequently changed or revised, the use of redlines facilitates the clearance process. A redlined version shows changes from the original directive; hence, new language appears underlined in red ink and deleted language appears in strikeouts in red ink. This redlined version facilitates clearance reviews and is commonly used for the annual clearance of program NOFAs.
3. Set clearance response deadline: Review periods of at least 10 workdays are used for clearance, unless the directive is new or complex; if the directive is new and complex, then at least 20 workdays are provided. The deadline is entered by the appropriate DMO in block #4 of the HUD-22. Shorter deadlines may be imposed for emergencies, provided justification for the emergency clearance is presented in the clearance request to reviewing offices. Offices with authority for mandatory reviews hold the option to nonconcur in order to stop an emergency clearance from proceeding.
4. Confirm mandatory transmittals: All directives must be cleared, at a minimum, by the following six offices within Headquarters: OCHCO, OGC, OIG, OCFO, CIO, and PD&R.

Originating offices are to confirm receipt by reviewing offices. If a directive is launched by email, the originating office engages the electronic return receipt request. If a directive is sent by hard copies, reviewing offices sign a hard copy receipt. Originating offices undertake appropriate follow-up to ensure that reviewing office received a directive's transmittal.

In addition to the six mandatory reviewing offices cited above, directives are cleared with appropriate offices with cross-cutting competencies.

5. Review responses: Originating offices respond to clearance comments accompanied by a HUD-22 signed by the HUD Principal or designee with authority to sign the HUD-22 form on behalf of the reviewing office. If authority for HUD-22 exists, confirmation of such authority is available through the DDMO.

An originating office does not assume an official response by a reviewing office lacking an executed HUD-22. Individual program counsel does not hold authority to sign a HUD-22 on behalf of OGC. OGC's Office of Legislation and Regulations presents the official/final OGC clearance response to directives.

6. Re-clear substantive changes: If a directive is revised significantly in terms of policy or legal premises following its placement in departmental clearance, the originating office must resubmit the draft directive for reclearance to mandatory reviewers with reset deadlines for a second review.
7. Secure final approvals: The originating office prepares the final text for issuance, executes a transmittal (form HUD-23), and transmits package to the DMO for the originating office for final processing. The DMO and/or other official with authority reviews the clearance record, directive and related documents to ensure that all required clearances are secured, that nonconcurrences are lifted, as appropriate, and that failures to respond are sufficiently reviewed.
8. Distribute to public: Electronic postings on HUDclips are requested by the appropriate DMO to the DDMO.

D-3 Reviewing Office Responsibilities: Offices reviewing a directive hold responsibility to:

1. Commence review upon receipt: In addition to distributing an incoming directive through appropriate internal offices and divisions, the DMO for a reviewing office contacts the DMO for the originating office in a timely manner when a reviewing office anticipates a delay. Requests for additional time may be asked by a reviewing office and may be granted by the originating office. Follow-up contacts are made when the delayed review is completed.

If a reviewing office determines a clearance deadline cannot be met, the reviewing office notifies the originating office. Under extreme time constraints, the originating office may issue a directive without securing and/or resolving clearance comments after inquiring from the overdue office the reason(s) for the delay and after notifying the overdue organization in writing before proceeding. Originating offices may not issue a directive without concurrence from OGC.

2. Manage intra-office clearances: The DMO for the reviewing office coordinates the intra-office responses and ensures that a single clearance response is submitted to the originating office. Reviewing offices are to preclude nonconcurrences to the extent possible by immediately contacting the originating office to present and resolve concerns. However, a reviewing office should not contact an originating office about a nonconcurrency without assurance that a nonconcurrency is the position that the head of the reviewing office intends to take. If an originating office agrees to resolve a concern informally presented by a reviewing office, the subsequent HUD-22 from the reviewing office should provide a concurrence with comment subject to the agreed-to resolution.
3. Execute HUD-22: Unresolved nonconcurrences are signed by the HUD Principal or a designee with redelegated authority. The redelegated authority to execute clearance records is issued in writing and transmitted to the DDMO prior to action on a specific directive. The options for executing a HUD-22 are no position (NP) on the clearance item; no need to review (NR) the clearance item, concur without comment on the clearance item, concur with comment on the clearance item, or nonconcur on the clearance item. A concurrence or nonconcurrency position taken by a reviewing office is subject to the following provisions:
 - a. Concur-with-no-comment: Means the office, and all divisions or branches thereof, has reviewed the directive sufficiently to determine that no impacts or conflicts exist to programs, operations, or authorities of the respective reviewing HUD Principal.
 - b. Concur-with-comments: Requires clearly stated recommended changes, additions, or omissions to the directive, stating the basis for such recommendations and indicating the level of importance in terms of incorporating the recommendation. For example, an incorrect legal citation or an incorrect phone number/website link may be a typographical error, but the necessity to make the change is crucial to the directive's end user. The reviewing office may opt to non-concur or concur-with-comment with respect to a technical error. The latter option identifies the importance, but avoids the need for formally lifting a nonconcurrency. Reviewing offices need to respect time constraints associated with a non-concurrency. Additionally, as provided in Section D-3.3.c below, a nonconcurrency comment may only be made if a reviewing office has the requisite authority to non-concur. Apart from recommendations on technical errors submitted as a concur-with-comment, reviewing office acknowledge that a concur-with-comment means the changes are recommended, but not mandatory.

- c. Non-concur: The reviewing office must hold program or policy authority over the conflicting issue within a directive, meaning if there is an impact to operations or delegated areas of authority. The reviewing comment clearly justifies the basis for the non-concur, explains how the conflict impacts the reviewing office's operations or area of delegated authority, and contains a recommendation, including substitute language, where applicable, on how the non-concurrence may be resolved. Execution of a nonconcurrence on a directive in clearance may only be made by a HUD Principal or the Principal's designee to which such authority has been delegated.
- d. No position or no need to review: Reviewing offices may indicate that it is taking no position (NP) on the clearance item or that it has no need to review (NR) the clearance item. These two options are added to the HUD-22 with the 2011 version of the HUD Directives Handbook.
- e. Invalid comments: Reviewing offices must identify a specific conflict to uphold a nonconcurrence and the conflict must be unique to the directive in clearance. This means that a reviewing office does not have the authority to not nonconcur on a proposed revision to a handbook when chapter 2 is in clearance, when the conflict occurs in chapter 3. However, the reviewing office must nonconcur if the conflict in chapter 3 links to the revision in chapter 2 in terms of invalidating the guidance or failure to revise causes the entire handbook to be legally deficient as a matter of policy or law.

Section E: Waiver of Directives

The HUD Reform Act addresses waiver requirements on actions impacting a benefit to, or removal of an obstacle to, participation by one or more specific individuals or entities. Waiver of directive requirements impacting only internal operations of HUD, or waivers affecting all persons equally, are not subject to the requirements of this section.

Provisions of this handbook are to be addressed unless a prior waiver is granted by the CHCO. To secure a waiver, the request must be documented, justified and made available for public inspection, in accordance with the requirements of section 106 of the Department of Housing and Urban Development Reform Act of 1989 (see 42 U.S.C. 3535(q)(4)) and HUD's Statement of Policy on Regulatory Waivers, which also addresses waivers of directives. OCHCO maintains an index of approved waivers for a period of not less than 3 years.

Waiver of provisions contained in a specific directive may be granted by the Secretary, Deputy Secretary, or HUD Principal authorized to issue a directive. The authority to grant waivers of directives may be redelegated to any officer or employee in the issuing official's organization, as well as to any officer or employee in a field office. Any such redelegation must be in writing. Any officer or employee with a redelegation of authority to waive a provision of a directive may grant waivers in accordance with this chapter, subject to any limitation contained in the redelegation of authority.

For each request for a waiver of a directive, the office originating the directive holds responsibility to:

1. Identify by title, date, number, or other identifying information, the directive to be waived, and the provisions for the requested waiver;
2. Justify both the cause for the request and the reason for granting a waiver;
3. Identify the person by name and title who is granting the waiver request and identify contacts for further information concerning it; and
4. Provide an index of requested, denied and granted waivers to the DDMO.

Unlike regulatory waivers, a summary of directive waivers is not published quarterly in the FR. However, similar to regulatory waiver requirements, the office granting a waiver of a directive maintains on file the original waiver request and subsequent actions. The file of directive waivers is available upon request for public inspection in accordance with statutory requirements. The DDMO is to be informed how requests for waivers are maintained in, and processed by, the originating HUD office.

Section F: Applicable Legal Authorities

The permissible content of a directive, the manner of clearing directives, and the establishment and maintenance of a directives system is both a HUD policy and statutory mandate. This handbook represents how directives are developed and issued. The requirements herein are consistent with, and within the parameters of, legal authorities, including:

1. The Administrative Procedure Act, which establishes the type of agency information that must be published in the FR;
2. The Paperwork Reduction Act of 1995, which regulates information that HUD offices may collect from program participants or required to be maintained as records;
3. Executive Order 12866 (Regulatory Planning and Review), which requires OMB review of certain guidance with significant impacts;
4. The Information Quality Act (section 515 of Public Law 106-554), which requires further OMB review; and
5. The National Archives and Record Administration (NARA), which requires the maintenance of a directive system by all federal agencies.

Section 552 of the Administrative Procedure Act (APA) (enacted as part of the Freedom of Information Act (FOIA)) (5 U.S.C. 552) requires agencies to publish certain items in the FR. Items that must be published in the FR include rules or procedures; substantive rules of general applicability formulated and adopted by the agency; descriptions of agency organization; statements of the general course and method by which the agency's functions are channeled and determined (which may be categorized as rules) and changes in or repeals to agency rules and policies. FR publication means that the parties to whom the information is directed, as well as the public in general, are given legal notice of the information; that is, parties cannot legally assert that the agency did not properly advise the public of information presented in a FR notice.

In determining whether a particular matter is appropriate for a directive as opposed to a rule, section 552 provides that *any document that prescribes a penalty or course of action, confers a right, privilege, authority or immunity, or imposes an obligation when intended to bind the Department must be published in the Federal Register.*

Although FR publication is the proper method for issuing the documents described in section 552 of the APA, HUD may also publish other documents in the FR when it decides that the FR is the preferred vehicle for informing the public.

The Paperwork Reduction Act of 1995 (Public Law No. 104-13, approved May 22, 1995) (PRA) requires all federal agencies to obtain OMB approval before collecting information from the public (including from program participants and regulated entities). Methods of collecting information include questionnaires, applications, performance reports, studies and evaluations, interviews, forms, and any other means of requesting information from 10 or more respondents. The PRA also covers required recordkeeping.

The PRA may be applicable to directives because it is not unusual and even customary for directives to elaborate on information collection processes referenced in regulations, but not addressed in detail. A directive may be the more appropriate document to address in detail an application process, reporting process, or recordkeeping system that is required of program participants by statute or regulation. A directive should not reference an information collection requirement unless that requirement has been approved by OMB and given an OMB control number, or unless the directive advises that the information has been submitted to OMB for review and OMB approval is pending.

Obtaining OMB approval requires publication in the FR of a proposed information collection, which allows the public a period of 60 days to comment, followed by a second notice, which involves another 30-day period. (See the Office of General Counsel's "Quick Guide to Assist with Compliance with the Paperwork Reduction Act of 1995 (PRA)" at <http://hudweb.hud.gov/po/c/regsindex.cfint&>.)

Section 515 of the Treasury and General Government Appropriations Act of 2001 (Public Law 106-554, approved December 21, 2007) known as the Information Quality Act, required OMB to promulgate guidance to ensure the quality, objectivity, utility and integrity of information (including statistical information) disseminated by federal agencies. OMB published interim final guidelines on September 28, 2002 (66 FR 49718) and finalized on February 22, 2002 (67 FR 8452). The Act directs each agency to follow OMB's guidelines with their own guidelines, which guidelines must describe internal mechanisms to ensure standards of quality, objectivity, utility and integrity. The mechanism allows affected persons to seek and obtain correction of information that fails to comply.

HUD ensures that information publicly disseminated is objective (accurate, clear, complete, and unbiased), useful, and has integrity through the Information Quality Guidelines published on November 22, 2002 (67 FR 69641). HUD's guidelines require departmental clearance of directives. These guidelines capture other types of direct issuances such as reports and studies. HUD's Information Quality Guidelines are posted at <http://www.hud.gov/offices/adm/grants/gualityinfo/gualityinfo.cfm>.

Creation and maintenance of federal records is required under 36 CFR part 1222. NARA is charged by statute to provide guidance and assistance to federal agencies with respect to ensuring adequate and proper documentation of policies and transactions of the Federal Government, including developing and issuing standards to improve the management of records. NARA regulations (at 36 CFR 1222.44) require federal agencies to adequately document, in appropriate directives, their policies and procedures, and for such directives to be maintained by the appropriate agency directives management officers.

Appendix A: Referenced Forms and Links

1. Plain Writing Act of 2010: <http://www.plainlanguage.gov/plLaw/law/index.cfm>
2. Form HUD-22, Departmental Clearance and Approval Record:
<http://portal.hud.gov/hudportal/documents/huddoc?id=22.pdf>
3. Form HUD-23, Transmittal:
<http://portal.hud.gov/hudportal/documents/huddoc?id=23.pdf>
4. Form HUD-21.B Notice:
<http://portal.hud.gov/hudportal/documents/huddoc?id=21b.pdf>
5. OGC link to explanation of rulemaking versus guidance:
<http://hudweb.hud.gov/po/c/regsindex.cfm>

Appendix B: Acronyms

CIO	Chief Information Officer
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
COO	Chief Operating Officer
CPO	Chief Procurement Officer
DDMO	Departmental Directives Management Officer
DMO	Directives Management Officer
ECO	Environmental Clearance Officer
EIS	Environmental Impact Statement
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact
FR	<u>Federal Register</u>
GC	General Counsel
Ginnie Mae	Government National Mortgage Association
HUD	Housing and Urban Development
HHQ	HUD Headquarters
NARA	National Archives and Records Administration
OFMS	Office of Facilities Management Services
OCHCO	Office of the Chief Human Capital Officer
ODOC	Office of Departmental Operations and Coordination
OGC	Office of General Counsel
OHHLHC	Office of Healthy Homes and Lead Hazard Control
OIG	Office of Inspector General
OMB	Office of Management and Budget
OSHC	Office of Sustainable Housing and Communities
OSPM	Office of Strategic Planning and Management
PD&R	Office of Policy Development and Research
PRA	Paperwork Reduction Act
PHA	Public Housing Agency
PIH	Office of Public and Indian Housing
PVT	Policy Vetting Team