

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.