

April 7, 2008

U.S. Department of Housing and Urban Development
Regulations Division
Office of the General Counsel
451 Seventh Street, SW, Room 10276
Washington, DC 20410-0001

To HUD Office of General Counsel:

Subject: HUD Proposal, *Independent Public Accountant Roster*
Docket Number: FR-5054-P-01

On behalf of the American Institute of Certified Public Accountants (AICPA) and its Governmental Audit Quality Center (GAQC), we are providing comments on the U.S. Department of Housing and Urban Development (HUD) Proposed Rule, *Independent Public Accountant Roster*. The AICPA is the largest professional association of certified public accountants in the United States, with approximately 350,000 members in business, industry, public practice, government and education. The AICPA is devoted to developing standards for audits and other services provided by CPAs, providing educational guidance materials to its members, administering the uniform CPA examination, and monitoring and enforcing compliance with the profession's technical and ethical standards.

All of the above-noted AICPA activities are undertaken with the objective of assisting our members in their efforts to serve the public interest. In light of this objective, we commend HUD for its stated goal of improving the quality of audits submitted to HUD. The AICPA shares HUD's commitment to improving the quality of HUD audits. However, even in light of our commitment to audit quality, we have so many serious reservations about the HUD proposal to establish an Independent Public Accountant (IPA) Roster that we strongly recommend that HUD not proceed with it. Those reservations, all of which are described further below, include concerns about the likely reduction in quality firms willing to perform HUD audits, the negative precedent that will be set by the proposal, questions about HUD's authority to establish and effectively administer the Roster, federalism implications, and unintended consequences to firms that are removed from the Roster by HUD that could affect their ability to practice outside of the HUD arena. We also have numerous concerns about specific provisions in the proposal including the lack of clarity regarding the registration, overly broad eligibility requirements, and the limited due process provided for firms that HUD might seek to remove from the proposed Roster.

The AICPA has taken a number of very significant steps to improve the quality of governmental audits over the last several years, including the launch of the GAQC in September 2004. The Center's scope covers all audits performed under *Government Auditing Standards* (referred to as governmental audits), including audits performed under Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations* (also referred to as single audits) and HUD audits. Attachment I to this letter includes a high level summary of the Center and its membership requirements, which are designed to enhance the quality of a firm's

governmental audit practice. There are also a number of joint and collaborative AICPA and federal government-wide efforts currently underway, spearheaded by the AICPA and OMB, looking at ways to improve single audit quality and HUD audits should benefit from the results of these initiatives.

We believe that a far better approach than the HUD proposal would be for HUD to work collaboratively with, and actively participate in, the efforts of the GAQC, OMB, and other federal agencies currently working to enhance the quality of governmental audits to develop strategies for improving HUD audit quality. We are happy to meet with HUD staff to provide more information about the Center and its members and to explore audit quality improvement partnership opportunities. HUD should also continue to use the enforcement program of the AICPA's professional ethics division (through its government referral program) which has dedicated resources and the expertise necessary to evaluate and address performance issues. The ethics division has developed provisions that allow it to share its findings with HUD. We are ready to investigate any referrals that HUD makes and would be pleased to work with HUD to explore improvements and to strengthen the referral and resulting investigative process to address any HUD concerns. State Boards of Accountancy are responsible for licensing CPAs who practice public accounting and for disciplining CPAs where appropriate, and we encourage HUD to work with the State Boards of Accountancy to review the current referral processes and to suggest improvements if they are needed as well.

The next sections of this letter summarize our overarching general concerns, our significant concerns with specific provisions of the proposal, and our other detailed comments, concerns, and questions. We have also provided comments to the HUD Desk Officer at the OMB and the Directives Management Officer at the HUD Office of Public and Indian Housing on the proposal's information collection burden provisions. That letter, issued on March 26, 2008, is provided as Attachment II to this letter and suggests that the burden estimate in the Proposed Rule is grossly understated and does not take into account the significant costs that will be incurred for IPAs to implement it.

Overarching General Concerns

Proposal Will Not Be Effective in Improving Audit Quality

We believe that the Proposed Rule will have little, if any, effect on improving the quality of HUD audits. Instead, it will likely have the detrimental effect, as set forth in more detail later in this letter, of reducing the pool of qualified firms that currently perform HUD audits. Such a result would not be in the public interest. HUD does not set forth any support for its assertion that the creation of an IPA Roster would improve the quality of either financial information submitted to HUD or audits performed by IPAs. HUD asserts that 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. This argument is flawed since it implies that IPAs, rather than their clients (i.e., the covered entities) are primarily responsible for the financial data submitted to HUD.

Proposal Sets Unnecessary and Costly Precedent

We are very concerned that the establishment of the HUD IPA Roster would set an unnecessary and costly precedent that other federal granting agencies may attempt to replicate in the future. If other federal granting agencies decide to follow HUD's lead and develop their own registration process, it would be unlikely that those agencies would adopt the same eligibility requirements. An outcome in which there are multiple federal registration systems with different eligibility requirements that vary, and perhaps conflict, from agency to agency would be extremely onerous and costly for IPAs, particularly those that perform single audits where multiple federal granting agencies provide funding. This is because the auditors would have to become familiar with the various agency requirements, determine eligibility multiple times, and then track eligibility based on varying or conflicting eligibility requirements among agencies. Such a scenario would likely push many quality auditors to abandon their single audit practices to avoid the burden, complexity, and risk that would result from multiple registration processes.

All Stakeholders Need to be Involved in the Solution for Meaningful Improvements to Occur

For meaningful improvements in HUD financial reporting and audit quality to occur, all of the key stakeholder groups need to be involved, including the audit profession, HUD grantees, and HUD staff. On the grantee side, some HUD grantees take the auditor-hiring process very seriously and engage in a rigorous procurement process that focuses on the firm's qualifications, the experience of its staff, the extent of the firm's practice with similar organizations, the results of external quality control reviews, and the firm's participation in quality improvement programs, like the AICPA's GAQC. Others, however, do not have a robust procurement process because of poor governance, lack of real involvement by audit committees, and management weaknesses. These entities are more likely to only consider the lowest bid offers and have poor audit quality issues. To further improve financial reporting and audit quality, HUD should focus more of its efforts on ensuring that its grantees have robust governance structures that, among other things, support the benefit of audits, consider the qualifications of a firm during the hiring process, and evaluate the reasonableness of the firm's anticipated hours in relation to the proposed fee based on the work to be performed. Although HUD has published guidance on how to select an auditor on its Web site, there seems to be little HUD oversight to ensure that grantees follow the guidance. Until the governance structures of these entities are addressed, the quality enhancement we all seek will be much more difficult to attain.

On the HUD staff side, the AICPA has heard that some HUD offices, particularly on the program side, question grantees or their auditors in situations where they believe too much money has been spent on the audit. While the AICPA certainly understands the budget pressures on all levels of government, quality audits rather than least costly audits are what best protect taxpayers. This kind of fee scrutiny by HUD or encouragement for grantees to go with the lowest bid sends the wrong message to grantees about their responsibilities to hire a qualified auditor. HUD should educate its program offices accordingly.

Legal Authority of HUD to Establish the IPA Roster is Questionable

It is clear that HUD is not assigned any specific responsibility with regard to the oversight of

accountants or the development of professional auditing standards. HUD does not cite any statutory provisions that directly authorize it to establish an IPA Roster. Instead, a single statutory provision, 42 U.S.C. § 3535(d), is cited as authority for the Proposed Rule. This provision is a general grant of rulemaking power that authorizes the Secretary of HUD to “make such rules and regulations as may be necessary to carry out his functions, powers and duties.” HUD also acknowledges that establishing an IPA Roster would be “unique to the federal government.” After researching this question in some detail, we question HUD’s legal authority to establish the IPA Roster.

Generally, federal courts employ a two-part test to evaluate the propriety of agency rulemaking that we believe is relevant for the question at hand. The first step is to consider whether Congress has directly spoken to the precise question at issue through prior legislation. If it has, then the court should give effect to the unambiguously expressed intent of Congress. If, on the other hand, the relevant statutes are silent or ambiguous with respect to the specific issue, the court upholds a reasonable interpretation made by the administrator of an agency. We believe Congress has expressed its intent with regard to this matter and that those expressions are contrary to HUD’s proposal to establish an IPA Roster.

- The Housing Act of 1995, which was intended to amend the United States Housing Act of 1937 (the USHA), proposed to create a new “Housing Foundation and Accreditation Board,” an independent agency whose principal function would have been to establish accreditation standards for public housing authorities (PHAs) and other participants in federal housing programs subject to HUD oversight. In addition, the proposed board would have been authorized to establish “standards, requirements, and procedures for performance and evaluation audits...and independent auditors conducting such audits.” HUD itself expressed opposition to the creation of a separate “Housing Foundation and Accreditation Board.” Witnesses also testified that additional federal involvement in the selection of IPAs for PHAs was unnecessary in that the auditors are subject to the ethics and standards of their profession. The Housing Act of 1995 was not enacted by Congress.
- In 1998, Congress enacted the Quality Housing and Work Responsibility Act, which amended the USHA. In comparison to the Housing Act of 1995, that legislation did not provide for the creation of an accreditation board or for the adoption of additional professional standards for IPAs conducting audits of PHAs. Instead, the act authorized a study by HUD to “identify the necessary and appropriate roles and responsibilities of various entities that would be involved in an accreditation program, including [HUD], the Inspector General of the Department, an accreditation entity, independent auditors and examiners, local entities, and public housing agencies.” (Pub. L 105-276 at Section 563(c)(2)(D)) Based on the legislation, it appears that Congress concluded that neither HUD nor an accreditation board should establish admission requirements for IPAs, at least not until *after* HUD had performed or commissioned a study and that Congress had decided that further legislation was needed. It is also worth noting that the consultants commissioned by HUD did not recommend the creation of an IPA Roster in their final December 2000 report.
- The Proposed Rule would establish federal practice requirements for IPAs of covered entities by requiring them to file an application for listing on a HUD-approved IPA Roster.

However, such federal agency practice requirements are clearly disfavored by Congress. In particular, Section 500 of the Administrative Procedure Act (the APA) states that an attorney in good standing may represent a person before a federal agency and that a certified public accountant may represent a person before the Internal Revenue Service (IRS), upon filing a declaration that he or she is duly licensed by one or more states. Prior to the enactment of Section 500 in 1965, some federal agencies had imposed their own application requirements, particularly for attorneys seeking to represent clients before the agency. By adopting Section 500, however, Congress sought to ensure that persons appearing before the agencies be represented by attorneys of their choice. By its terms, Section 500 of the APA does not expressly address the federal practice of accountants before agencies other than the IRS. In broader terms, however, Section 500 does reflect Congress's recognition that professionals such as attorneys and accountants are subject to extensive state licensure and oversight and that there is no compelling federal interest in establishing additional admission requirements for attorneys or accountants. Given this recognition, and the fact that HUD itself acknowledges that no other federal agency currently has in place a "Roster" system for IPAs, we believe that Congress intended to bar agencies such as HUD from adopting such a requirement.

- The Federal Acquisition Streamlining Act of 1994 (FASA) expressly provides for the adoption of uniform regulations governing the government-wide suspension or debarment of certain persons from participation in various government programs and activities, including programs that provide financial and non-financial assistance and benefits. Pursuant to a *specific grant of rulemaking authority* in FASA, the OMB has adopted inter-agency guidelines, the most recent version of which were published in 2005. In turn, HUD adopted the latest version of those guidelines in late 2007, which are currently set forth in 24 C.F.R. Part 24. These rules are quite detailed, but provide that HUD may debar or suspend a "principal" in a "covered transaction" from continued participation in such transactions, upon proof of certain types of misconduct. HUD's current rules implementing the OMB guidelines specifically provide that accountants may be "principals" for these purposes. Moreover, HUD has repeatedly taken the position that IPAs who perform flawed audits of covered entities are subject to potential suspension or disbarment under 24 C.F.R. Part 24. The removal of an IPA from the IPA Roster under the Proposed Rule also would result in the IPA's suspension or debarment from continued participation in audits of covered entities. In our view, Congress's decision to promote uniform suspension and debarment regulations in FASA indicates that Congress did not intend for HUD to adopt additional disciplinary rules for accountants, whom HUD already treats as subject to the uniform regulations. Indeed, HUD's assertion in the Proposed Rule that the removal of an IPA from the IPA Roster could take place in a more "timely and efficient" manner than currently occurs under 24 C.F.R. Part 24 appears to suggest that HUD is now proposing to circumvent both Congress's intent as expressed in FASA and the spirit of OMB's inter-agency guidelines.

We acknowledge that there is considerable authority for the view that, pursuant to either an agency's "inherent powers" or general grants of rulemaking authority similar to 42 U.S.C. § 3535(d), an agency may discipline accountants and other professionals who have engaged in improper professional conduct. However, such disciplinary authority is a far different matter from a

federal agency's establishment of admission or registration requirements for accountants or other professionals. Indeed, federal courts have held that an agency's authority in such circumstances is generally limited to protecting the integrity of the agency's administrative processes, rather than modifying the "primary conduct" of persons subject to the agency's jurisdiction. HUD's Proposed Rule arguably would serve to "modify parties' primary conduct" in several respects. In particular, covered entities would be restricted to selecting IPAs whose names appear on the IPA Roster for a particular jurisdiction. In addition, the eligibility requirements under the Proposed Rule might affect the primary conduct of accounting firms themselves. For example, an IPA might conclude that, as a practical matter, it is unable to settle a Securities and Exchange Commission (SEC) disciplinary proceeding that was entirely unrelated to the firm's audits of any covered entity subject to HUD oversight, since doing so might lead to the firm's automatic removal from the IPA Roster.

In this regard, a comparison of the Proposed Rule to Rule 102(e) of the SEC's Rules of Practice is instructive. Rule 102(e) permits the SEC to suspend or disbar from practice before the Commission accountants found to have engaged in "improper professional conduct." The SEC has historically taken the position that it has authority to adopt Rule 102(e) under Section 23(a)(1) of the Securities Exchange Act of 1934, a general grant of rulemaking authority similar to 42 U.S.C. § 3535(d), and several federal courts of appeal agreed with the Commission's position. While several federal courts acknowledged the SEC's authority to discipline accountants under Rule 102(e) in order to protect the integrity of the agency's processes, judges also stated that the rule's validity might be called into question if the SEC attempted to use the rule to engage in the "*de facto* substantive regulation of the profession."¹ At the same time, courts have noted that Rule 102(e) neither results in the substantive regulation of the accounting profession nor requires regulated parties to modify their primary conduct. Unlike Rule 102(e), we believe that the HUD Proposed Rule would, in fact, result in the "*de facto* substantive regulation" of the profession and should not be adopted unless a rule is expressly authorized by Congress.

We have described several legitimate legal issues above that we believe raise significant questions about whether HUD's Proposed Rule is inconsistent with the intent of the Congress in this area. We also question HUD's authority to establish the proposed IPA Roster and recommend that HUD perform its own due diligence to determine if it is, in fact, legally authorized to issue a Final Rule establishing an IPA Roster. If such research supports the conclusion that HUD is legally authorized to do so, the Final Rule should describe the basis for HUD's conclusion in far greater detail than the one citation to 42 U.S.C. § 3535(d) in the current proposal.

Proposal Has Significant Federalism Implications

The HUD proposal states that Executive Order 13132 prohibits, to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications. That Order requires each federal agency to "have an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications," which are defined to include regulations that have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. HUD concludes, without

¹ *Checkosky v. SEC*, 23 F.3d 452, 459 (D.C. Cir. 1994) (Silberman, J., concurring).

providing any supporting evidence, that the proposal “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.” We question HUD’s assertion and believe that the proposal does have significant implications related to federalism.

The Proposed Rule has several direct effects on states and/or the relationship between the federal government and the states. First, since accountants are licensed and admitted to practice primarily at the state level, the Proposed Rule affects the traditional distribution of responsibilities among various levels of government. Second, the Proposed Rule would have a direct impact on the ability of some states, which currently select IPAs to audit covered entities, to select the auditors of their choice. At least one comment already submitted to HUD on the Proposed Rule supports this. Specifically, the Mohave County Housing Authority (the MCHA) has noted that the State of Arizona Auditor General selects its auditor every three years and that the MCHA could not mandate that the Auditor General use an IPA on the IPA Roster. It further observed that, if the MCHA were required to use a different auditor, there would be an additional, duplicative expenditure.

It is also important to note that state auditors would be subject to the regulatory system which would be established by the Proposed Rule. Clearly, the proposal has significant federalism implications that HUD has not yet recognized or addressed.

Pool of Quality HUD Auditors Will Likely be Reduced

Because of the onerous nature of the proposed HUD registration and continuing eligibility processes and the future risk to a firm of being removed from the Roster, high quality CPA firms may decide that it is not worth the effort or risk to their practice by continuing to perform HUD audits, particularly due to the numerous small HUD audits with low fees. This would be in direct conflict to HUD’s stated goal of improving the quality of HUD audits. Such potential abandonment of HUD audit practices by firms will not be in the public interest and will be extremely problematic in the parts of the country where there are few HUD auditors to begin with.

Proposal Will Result in Unintended State Board Consequences

Removal of a firm from the HUD IPA Roster could have serious unintended consequences. In some states, a removal from the IPA Roster could be viewed as a “debarment by a federal agency” for purposes of state accountancy laws, resulting in potential CPA license revocation. This would have a devastating effect on firms by preventing them from performing other kinds of audits, outside of the HUD arena, for which they are very qualified. HUD should work closely with the State Boards of Accountancy to determine the potential for this unintended consequence before proceeding any further with the proposal.

The Proposal is Inconsistent With the Single Audit Concept

The HUD Proposed Rule would apply to single audits where HUD is the cognizant or oversight agency for audit under the Single Audit Act Amendments of 1996. A single audit is intended to provide a cost-effective audit for non-federal entities in that one audit is conducted in lieu of multiple audits of individual programs. We believe the HUD proposal is inconsistent with the spirit

of the Single Audit Act in that HUD is establishing its own separate requirements as to who can perform the single audit when the single audits themselves include not only audits of HUD funds but of other agency funds as well. This should not be allowed, especially in light of our concerns expressed above in the section titled "Proposal Sets and Unnecessary and Costly Precedent" regarding the potential for other federal granting agencies to replicate a registration system similar to that which HUD is proposing.

Significant Concerns with the Specific Provisions of the Proposal

Overly Broad Eligibility Requirements. The proposal includes 12 eligibility requirements, several of which are overly broad, that will likely create confusion by making it difficult for auditors to understand what they are agreeing to with regard to initial eligibility and then maintaining compliance on an ongoing basis. For example, a firm must agree to comply with "all" applicable HUD rules and instructions relating to financial reporting, audits, or related services and also agree to comply with "any" requests for information made by HUD to stay on the Roster. The broad nature of these requirements will lead to the use of significant judgment on the part of HUD in terms of continued firm eligibility. This is particularly problematic in light of the limited due process concerns articulated in a separate comment below.

How will auditors know exactly which rules and instructions are applicable and with which they need to comply? In commenting on a draft of Chapter 7 of the *HUD Consolidated Audit Guide* before it was recently finalized, the AICPA commented that the reference materials listed in the chapter included a citation to "various mortgagee letters." Our comment to HUD noted that there were hundreds of mortgagee letters and that HUD should be more specific about which ones applied to the audits covered by Chapter 7; otherwise auditors would have to look through all of them to find the applicable letters. In finalizing the chapter, no change was made to the reference to "various mortgagee letters." This is just one small example which illustrates why HUD needs to be more specific about exactly which rules and instructions are being referenced. A very detailed listing should be developed and made widely available for each type of HUD audit if auditors are going to be held accountable by HUD to be in compliance.

We are also quite concerned about this requirement in that we have observed that HUD does not always maintain its rules and instructions in an up-to-date manner. Examples include the *HUD Consolidated Audit Guide*, HUD Handbooks, and the HUD Web site. The last major update to the *HUD Consolidated Audit Guide* was almost 10 years ago. More recently, HUD began updating it on a chapter-by-chapter basis. While the updated chapters (many of which are currently effective) are available on the HUD Inspector General (IG) portion of the HUD Web site, the version of the "complete" HUD Guide that appears on the IG site and on HUDCLIPS (i.e., HUD's client information and policy system) only includes the complete "old" version of the Guide without the updated chapters. Further, HUDCLIPS does include individual chapters but they have not been updated for the newer versions that are now effective. We have brought this to HUD's attention on several occasions but it has yet to be addressed. If an auditor inadvertently clicks on the complete version of the Guide or the individual chapters on HUDCLIPS, they would be following the wrong rules and instructions in a document that is being made available by HUD. If HUD is serious about holding auditors to eligibility criteria that require adherence to "all" rules and instructions, a framework should be in place such that HUD is able to specifically articulate what rules and

instructions are being referred to and that would ensure that all rules and instructions are maintained in a current manner. This will take devoted resources by HUD which should not be overlooked in determining the overall costs that HUD must incur if the Proposed Rule is finalized.

Further, with regard to complying with “any” requests for information, HUD should define specific “reasonable” parameters as to what information would be appropriate for HUD to request. As it is currently drafted, HUD could make any request, no matter how onerous, and have the ability to remove a firm from the Roster if the IPA declines. We believe there will be many firms who decide not to register for the IPA Roster based on the broad nature of this requirement alone. HUD should also be aware that there is certain information that firms are not able to share due to confidentiality concerns or the proprietary nature of the information being requested. In these cases, a firm would not be in a position to share the information.

Proposal Unclear About Level of Required Registration. The proposal is not clear about whether the registration must be made by individuals or firms. This is a significant problem in that, for compliance to be achieved, those that register must be able to understand the level against which they are being evaluated. Further, when discussing licensure, it must be clear whether HUD is referring to individuals or firms. Much work is needed on the document to make clarifications in these areas.

Throughout the Proposed Rule, HUD uses the term IPA. However, the document is inconsistent as to whether “IPA” means the auditor as an individual or a firm. For example, Sections 5.802 and 5.808(c) indicate that the IPA is an individual as follows:

- Section 5.802 contains the following definition of 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 . . .”
- Section 5.808(c) indicates that “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.” In this context it appears that individuals are being engaged. This is problematic in that clients do not contract with an individual of a firm for their audit, they contract with the *firm*.

On the other hand, Sections 5.804(a) and 5.810 indicate that the IPA is *either* a public accounting firm or an individual as follows:

- Section 5.804(a) indicates that HUD “maintains a roster of independent public accountants and public accounting firms (IPAs) who are approved. . .”
- Section 5.810 provides eligibility requirements for placement of public accounting firms (Section (a)) and individuals (Section (b)) on the IPA Roster.

These inconsistencies are particularly important because both firms and individuals are licensed. When the Proposed Rule speaks to whether the IPA is licensed in the jurisdiction of a covered entity, is HUD referring to the license of the firm or the individual? These may not be the same. For example, some CPA firm offices are licensed in the state in which they are located. However, a

partner assigned to an office may hold licenses for additional states. The firm may or may not have an office in the additional states.

These inconsistencies are also important with regard to continued eligibility as Section 5.814(b)(1) speaks to involuntary automatic removal from the IPA Roster when the “IPA fails to maintain compliance with eligibility requirements by being debarred. . . or other denial of rights to practice before the SEC.” However, the eligibility requirement on the same topic in Section 5.810(a)(2) indicates that the firm must not be or employ or contract with anyone for the performance of audits...who is, suspended, debarred...or other denial of rights to practice before the SEC.” This needs clarification.

In speaking to HUD staff about the proposal we believe it is HUD’s intent that the registration would occur by firms for each of their existing Unique IPA Identifier (UII) numbers which we were told relates to each of a firm’s offices that perform HUD work. None of our members that assisted us with the review of the Proposed Rule came away with that understanding. If the UII registration is HUD’s intent, we are also aware that there are inconsistencies with how the UII is currently used that would need to be considered and addressed by HUD. For example, some firms only have one UII for the entire firm even though they perform HUD audits in multiple offices. Some firms have UII numbers for every office that does HUD work. Some even have UIIs for some of the offices that perform HUD work and not for others.

Due Process Rigor for Roster Removal Significantly Lacking. HUD characterizes the current suspension and debarment proceedings which are currently at its disposal for addressing audit quality issues as “costly and very time consuming.” To avoid the due process rigor built into the suspension and debarment process, the HUD proposal significantly limits the due process for removal of firms from the Roster. As proposed, it appears that the HUD Real Estate Assessment Center would basically serve as the plaintiff, the jury, and the judge in cases where there is a dispute. Such a process would not afford firms a fair hearing before becoming ineligible to perform HUD audits. While we acknowledge that firms have a chance to appeal, they are only provided 30 calendar days to submit a written response to HUD. At that time, another HUD official would review the case, conduct a conference with the IPA (if requested), and issue a determination. We do not think it likely that a second HUD official would be willing to overturn the ruling of another HUD colleague. Further, providing only 30 days for a firm to appeal a HUD Roster decision is a relatively short period of time, particularly if it falls in the midst of a firm’s HUD (or other) busy season.

There is already an existing, recently established, federal task force headed up by the OMB that is looking at ways to make the suspension and debarment process less cumbersome for federal agencies to use. We strongly recommend that HUD participate in the OMB process versus taking its own steps to work around the suspension and debarment rules entirely. If HUD does not accept this recommendation and decides to move forward, it will be imperative that HUD develop a strong system of internal control and a robust due process system, including having knowledgeable HUD staff involved in the process, to ensure that firms would not be removed from the Roster erroneously or without appropriate independent due process to provide IPAs with a fair and democratic process.

Many Firms Would be Ineligible Due to Provision in Section 5.810(a)(2). The Proposed Rule includes a provision that would disallow a CPA firm from being eligible to register (or to remain on the Roster if initially eligible) if one of its partners or employees has been debarred by the SEC. This requirement is even stricter than the rules imposed on firms auditing public companies. Barring a firm from performing HUD audits because a partner or employee that does not do HUD audits has been debarred by the SEC would most certainly reduce the pool of qualified HUD auditors. There are likely to be many firms performing public company audits that have employees who are subject to the restrictions described in Section 5.810(a)(2). Does HUD really intend to eliminate those firms from participation in the audits of covered entities? Section 5.810(a)(2) also would not allow a CPA firm to be eligible to register or remain on the Roster if one of its partners or employees is subject to a jurisdiction's disciplinary action that results in the revocation, suspension, or surrender of a license or authorization to practice public accounting. Again, consider a firm where this situation has occurred for an employee that does *not* serve on HUD engagements. Having such an individual employed by the firm would make it ineligible to perform HUD audits. HUD should delete this requirement or revise the requirement to apply only to partners or employees that perform HUD audits.

HUD Internal Resources Will Need to be Greatly Expanded, Improved, and Centralized. HUD states in the proposal that, once implemented, the IPA Roster rule would result in significant savings of departmental resources by enabling the Department to take action against an IPA in a timely and efficient manner. We disagree because HUD will have to invest in developing an appropriate framework and related staff expertise organization-wide to effectively and fairly handle the IPA Roster responsibilities that are being proposed. If HUD moves forward with the proposal, it will need significant internal processes and controls in place to ensure that HUD staff are technically competent, that auditors are treated fairly, and that there is a HUD technical support network for auditors. Development of such a framework would be necessary and would result in significant additional costs to HUD. The Public Company Oversight Accounting Board (PCAOB) is one of the few organizations that we are aware of that require firm registration (which was authorized by legislation). They have approximately 1,200 registrants which is a far smaller population subject to registration than the more than 7,000 registrants (as estimated by HUD) that would be subject to HUD's Proposed Rule. The PCAOB's division that monitors registration and enforcement is large and we believe that HUD would have to devote at least as many resources to be able to effectively handle its responsibilities relating to the Roster.

Having knowledgeable focused HUD staff will be imperative for purposes of determining eligibility, making decisions about a firm's adherence to professional standards and other matters, and providing ongoing technical assistance. While many HUD staff are competent, we sometimes hear anecdotally from members about having difficulty obtaining guidance from HUD staff or having interactions with inexperienced HUD staff. It would be very unfair for a firm to be deemed ineligible by HUD based on a misguided HUD reviewer. This is particularly important due to the proposed limited due process afforded any firm that a HUD reviewer might find an issue with. PCAOB inspections specialists, which play similar roles to the role HUD would be taking in terms of reviewing HUD audits and determining future eligibility based on those reviews, are required to have certain very significant qualifications to perform firm inspections such as the following: (1) Must be a current Certified Public Accountant; (2) Must have at least 5-8 years of progressively responsible experience at the Senior Management/Manager level in the audits of public companies;

and (3) Have a strong knowledge of generally accepted auditing standards and generally accepted accounting principles. We believe that, if HUD is serious about moving forward with an IPA Roster registration process, that HUD must design very stringent criteria regarding who is able to perform the IPA quality reviews and make determinations about a firm's initial and ongoing eligibility. Further, to ensure that technical resources are available to auditors and that there is consistency in the information and guidance provided to auditors, HUD should establish a centralized technical assistance function with technically competent staff that are available to assist auditors.

HUD Audit Fees Will Increase. As noted in our comment letter on the Proposed Rule's information collection burden provisions (see Attachment II), if adopted, the proposal will result in significant costs for IPAs that will likely be passed through to HUD grantees (that is, for registering, monitoring firm compliance, and defending potential challenges by HUD). This cost pass-through will result in increased audit fees overall for HUD engagements. As noted earlier in this letter, we periodically hear from our members that they are asked to defend their audit fees with various offices of HUD. As we anticipate audit fees to increase if the Roster is established, HUD should launch a full-scale educational effort with both HUD offices and grantees to prepare them for the increase in audit fees in the event HUD decides to move forward with the proposal.

Other Detailed Comments, Concerns, and Questions

This section of our letter includes other specific comments, concerns and questions on various aspects of the proposal.

Administration Versus Property Location Jurisdiction Question. Some HUD projects are administered in one state but the real estate is located in a different state. The proposal is unclear as to which state the firm must register.

Firm Mergers. The proposal is unclear about the impact of firm mergers on continued Roster eligibility. For example, consider a firm listed on the IPA Roster that merges with another firm whose former owner is barred from performing HUD engagements. It appears that the new merged firm would be disbarred from the roster if the former owner stays with the merged firm in another capacity (such as tax preparation where the former owner has more expertise). This should be clarified.

Scope of the Proposal. The scope of the proposal covers "audits and related services" which appears to mean that a firm performing audits, review, or compilation services would have to register with HUD. This is not clear in the proposal except by reading the definitions in Section 5.802. We do not support registration for review and compilation services for the same overall concerns described earlier in this letter relating to audits.

Auditing Standards. The definition of Professional Standards in Section 5.802 includes a listing of references to various auditing standards. That list does not include a reference to the standards of the PCAOB, which we believe auditors of certain covered entities would be required to follow. If the proposal is adopted, those standards should be added to the listing of standards.

Consequences of Removal from the IPA Roster. The proposal states that if an IPA is currently engaged to perform an audit and has been notified that they are to be removed from the Roster, the IPA is not prohibited from completing its *contracts* or engagements. If HUD proceeds with the proposal, it may want to clarify this provision in that some auditors have multi-year contracts with their clients. If an IPA is in the second year of a five year contract when notification of removal from the roster is received, we assume that HUD would allow the engagement to be finished but question whether the auditor would be permitted to complete the remainder of the five year contract. This should be clarified.

Timing of Registration. Several firms that perform HUD audits indicated a concern about the timing of the HUD approval of registration and how it might impact proposing on new engagements. For example, consider a firm that would be included on the HUD Roster for several jurisdictions and wants to propose on a HUD engagement in a new jurisdiction that was not previously included on the initial HUD registration. It is not clear whether the firm would have to re-register with HUD for that new jurisdiction before proposing on the engagement. If so, it would be critical for HUD to address these situations in a very timely manner or firms may not be able to propose on new engagements. If HUD moves forward with the proposal, this situation should be addressed.

* * * * *

We appreciate the opportunity to comment on the Proposed Rule and would be happy to discuss the feedback included in this letter with you. Because of the extensive nature of our comments, we hope that before HUD determines its future strategy with regard to the Proposed Rule that we can arrange a meeting to discuss further the issues that underlie HUD's reasons for developing the proposal and to explore other potential solutions that will be more effective in improving the quality of HUD audits. Please contact me at 212-596-6197, or Mary Foelster, Director of the GAQC, at 202-434-9259 if you have any questions, need any further information, or would like to schedule a meeting.

Sincerely,



Susan S. Coffey, CPA-NJ
Senior Vice President
Member Quality and State Regulation

Background Information on AICPA Governmental Audit Quality Center

The GAQC's mission is to promote the highest quality governmental audits (which include HUD audits) and to help CPAs meet the challenges of the often unique and complex auditing requirements associated with these audits. GAQC is a resource for best practices. It also helps raise awareness about the importance of governmental audits and develops a community of CPA firms that demonstrate a commitment to the highest quality governmental audit practices. Its Web site -- <http://www.aicpa.org/GAQC> -- enables member firms to access information, guidance, and practical tools whenever they are needed. Recently, the GAQC added a HUD information page to its Web site to ensure that its members are kept up-to-date on important HUD developments. GAQC also sends electronic alerts to members with important news and developments.

GAQC member firms are required to adhere to membership requirements that go beyond what they would otherwise have to do to perform this work. For example, any firm joining GAQC must:

- Designate an audit partner to have firm-wide responsibility for the quality of the firm's governmental audit practice.
- Require the audit partner designated with firm-wide responsibility for the quality of the firm's governmental audit practice to meet the continuing professional education (CPE) requirements of *Government Auditing Standards* even if that partner is not otherwise subject to those CPE requirements. The firm must also require the audit partner to participate in an annual GAQC-sponsored program on recent developments in governmental auditing.
- Establish policies and procedures specific to the firm's governmental audit practice to comply with the applicable professional standards and GAQC membership requirements. These policies and procedures must be documented and appropriately communicated.
- Establish annual internal inspection procedures that include a review of the firm's governmental audit practice by individuals possessing current experience and knowledge of the accounting and auditing practices specific to governmental audits.
- Make publicly available information about its most recently accepted peer review as determined by the GAQC executive committee, and have its governmental audits selected as part of the firm's peer review by a team member employed by a GAQC member firm.
- Periodically file with the center information about the firm and its governmental audit practice and agree to make such information public.

GAQC's current membership of almost 1000 firms audits approximately 83 percent of the total federal expenditures covered in single audits performed by CPA firms. Many of GAQC's member firms also perform HUD audits. GAQC is also resource for firms and government auditors who are not members. Many federal agencies are beginning to recognize this and are informing the center staff when matters of importance occur so that they may be communicated on the Center site and in some cases through a GAQC Alert.



March 26, 2008

HUD Desk Officer
Office of Management and Budget
New Executive Office Building
Washington, DC 20503

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

To Whom It May Concern:

**Subject: Information Collection Burden Provisions of HUD Proposed Rule,
*Independent Public Accountant Roster***

On behalf of the American Institute of Certified Public Accountants (AICPA) and its Governmental Audit Quality Center (GAQC), we are providing comments on the information collection burden provisions in the U.S. Department of Housing and Urban Development (HUD) Proposed Rule, *Independent Public Accountant Roster* (Docket Number FR-5054-P-01). The AICPA is the largest professional association of certified public accountants in the United States, with approximately 330,000 members in business, industry, public practice, government and education. The AICPA is devoted to developing standards for audits and other services provided by CPAs, providing educational guidance materials to its members, administering the uniform CPA examination, and monitoring and enforcing compliance with the profession's technical and ethical standards.

This letter is intended to assist the Office of Management and Budget (OMB) in making a decision concerning the collection of information as required by 5 CFR 1320. As discussed below, we believe the burden estimate in the Proposed Rule is grossly understated and does not take into account the significant implementation costs that will be incurred by Independent Public Accountants (IPAs). The AICPA is still in the process of analyzing the HUD Proposed Rule and will be providing a separate comment letter on the detailed components of the proposal before the April 7, 2008, comment deadline. That letter will describe our significant concerns with the other aspects of the proposal and our strong recommendation that HUD not proceed with it.

The Proposed Rule states that the burden of information collection for the IPA Roster is 1 hour for each of an estimated 7,137 parties that would be subject to the HUD registration process. There is no rationale provided for HUD's estimate of these numbers in the

proposal. Additionally, the proposal is unclear as to the level at which registration would occur (that is, by individual, firm, or by existing Unique IPA Identifier), further exacerbating the inability to accurately calculate the burden.

However, even without additional clarity on the points in the previous paragraph, we believe that the time estimate of 1 hour per registrant (at whatever registration level is intended by HUD) is grossly understated. The definition of burden in CFR 1320.3(b) is broad and includes the total time, effort, and financial resources by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. The burden associated with the HUD proposal should not only consider the actual “physical” registration process, but also the significant effort that IPAs (which include public accounting firms) will have to make to first determine initial eligibility and then track compliance with the eligibility requirements on an ongoing basis.

For example, one of the eligibility requirements in the proposal requires notification to 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). Another eligibility requirement requires a similar notification if the IPA or any member or employee of the firm is, or has been, adjudged to be civilly liable for any of the offenses listed in 24 CFR 24.800(a) within the previous 5 years. Some firms that perform HUD audits that would be covered by the proposed rule have hundreds or even thousands of employees, from mail room staff to the firm managing partner, and these requirements will need to be checked and/or updated for every single employee before registration can occur. Further, systems will have to be established by firms to track existing employees’ continued compliance with these eligibility requirements, as well as to capture information on new employees. These two eligibility requirements on their own will be a significant undertaking for firms of all sizes. There are 10 other eligibility requirements that will need to be considered and tracked by firms which will only add to the burden.

We have received information from larger firms (that in some cases have over 20,000 employees) that this endeavor could take hundreds of hours. Even for smaller firms, developing and maintaining processes and ongoing systems to track eligibility with the proposed HUD requirements will clearly take longer than 1 hour. We polled several smaller firms about the estimated burden and they thought the registration process could be a 3-6 month undertaking that would involve sending out notices to all employees in the firm, reading and evaluating the replies, and taking appropriate action if issues are discovered. They also believe there would be follow-up time needed with HUD in answering any questions they may have regarding the registration application, and additional time involved for ongoing monitoring and reporting to HUD when issues arise.

The estimates included in the proposal also do not take into consideration the substantial costs for IPAs to establish and maintain systems and documentation related to tracking

HUD Desk Officer
Directives Management Officer
March 26, 2008
Page 3

the eligibility requirements. We believe that these costs far outweigh any potential benefits of the proposal. HUD should be required to do a complete cost assessment, based on research and discussion with those that would be affected by the proposal before proceeding further.

To conclude, we believe that the HUD estimates related to the information collection burden provisions associated with the Proposed Rule are grossly understated and do not address the costs that IPAs will incur. While we are unable to provide an alternative specific time estimate due to the lack of clarity in the proposal relating to the intended registration level (cited above), we are certain that for the majority of firms it will be far greater than 1 hour and that the costs will be substantial.

We appreciate the opportunity to comment on the information collection burden provisions associated with the Proposed Rule and would be happy to discuss the feedback included in this letter with you. Please contact me at 212-596-6197, or Mary Foelster, Director of the GAQC, at 202-434-9259 if you have any questions or need any further information.

Sincerely,

A handwritten signature in cursive script, appearing to read "S Coffey".

Susan S. Coffey, CPA-NJ
Senior Vice President
Member Quality and State Regulation