The scope of the U.S. Department of Housing & Urban Development (HUD, or the Department) includes a variety of programs, including Federal Housing Administration (FHA) insurance, affordable housing assistance, community development grants, secondary market support, and fair housing oversight. Since its creation in 1965, HUD has been a vehicle for addressing the most important domestic crises, whether they be natural disasters, human-engineered financial instability, or other challenges. Furthering this perception, HUD has been a critical source of financing in times of economic distress as lenders and other funders wait for the restoration of economic stability. Despite this critical function, HUD is one of the smallest cabinet-level departments of the federal government, with a current staff of approximately 9,000 employees, emphasizing the key role that these individuals serve. At the same time, HUD’s stated mission is to create strong, sustainable, inclusive communities and quality affordable homes. These dual goals of serving as both a financial institution and an entity with a social mission can create challenges for HUD staff and those who interact with HUD.

This introduction explains HUD’s basic structure, including its division into program areas, with a focus on the structure of the Office of General Counsel and how practitioners might interact with this office. The introduction concludes with an overview and guide to the chapters and their interrelationships.

I. DEPARTMENTAL STRUCTURE

HUD’s organizational structure forms the basis of the maze and includes headquarters in Washington, D.C., 10 Regional Offices throughout the United States, approximately 70 additional Field Offices, and various “centers” with specialized responsibilities. Staff in the Field Offices report administratively to the Regional

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1. For staff size, see HUD, FY2013 Budget, Congressional Justifications for Estimates, FTE Summary at B-12, requesting 9,283 full-time employees. This level is considerably lower than, for example, the 13,500 employees in 1992 and the 10,500 employees in 1997. The HUD 2020 Management Reform Plan, 62 Fed. Reg. 43,204, 43,212 (Aug. 12, 1997) [hereinafter the HUD 2020 Plan].


3. For a general organizational chart, see http://www.hud.gov/offices/adm/about/admguide/orgcharts/hud.pdf (last accessed March 5, 2012). For a description of the 10 Regional Offices, see http://portal.hud.gov/hudportal/HUD?src=/localoffices/regions (last accessed March 5, 2012). For a list of Field Offices, see http://portal.hud.gov/hudportal/HUD?src=/localoffices (last accessed March 5, 2012). The specialized centers include the Departmental Enforcement Center in Washington, D.C., with five satellite offices (New York, Atlanta, Ft. Worth, Chicago, and Los Angeles); the Real
Navigating HUD Programs

Offices, but substantively to the Assistant Secretary whose programs they are implementing.4

Part of this structure is historical artifact. When created in 1965, HUD united a variety of existing governmental entities, including the FHA, the Public Housing Administration, the Urban Renewal Administration, and the Housing and Home Finance Agency.5 While each entity of the newly created HUD had administered programs relating to housing, community, and economic development, they had not necessarily done so in consultation with the others. For ensuing decades, each Secretary of HUD has placed varying degrees of emphasis on having the agency operate as a cohesive entity that administers all of its programs in a coordinated fashion for the benefit of local communities.6

HUD’s enabling legislation provides for a Secretary who, as a member of the President’s cabinet, is appointed by the President and confirmed by the Senate.7 HUD’s authority is vested in the Secretary, who delegates authority to any of the Assistant Secretaries and other offices and officers.8 A Deputy Secretary generally has concurrent authority with the Secretary. While all Assistant Secretaries have equivalent levels of authority, four “program” Assistant Secretaries are responsible for the four primary areas of HUD, as further described below.

The FHA Commissioner also serves as the Assistant Secretary for the Office of Housing.9 The Office of Housing is the largest office in HUD and is responsible for

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6. In one of the most notable examples, Secretary Cuomo’s ambitious HUD 2020 Management Reform Plan fundamentally restructured HUD’s management. In particular, it consolidated similar functions performed by separate program “cylinders” into functionally oriented centers serving different programs. For example, it created the Real Estate Assessment Center to monitor physical condition of properties in both the Office of Housing and the PIH portfolios. HUD 2020 Management Plan, supra note 2 at 43,212.
7. See 1965 Act at § 3(a).
8. See 1965 Act at § 4(a). In addition, HUD publishes “delegations of authority” establishing the substantive areas of the Assistant Secretaries and their authority to delegate responsibilities to subordinates. In 2010-2011, HUD published a comprehensive overhaul of the delegated authority to various Assistant Secretaries, offices, and officers. A summary web page linking to the delegations, many of which are cited in this introduction, can be found at http://portal.hud.gov/hudportal/HUD?src=/delegations-of-authority.
all FHA programs, including single-family housing as well as multifamily housing, which includes affordable and market-rate rental housing, cooperatives and condominiums, and health care. The Office of Housing’s health-care programs include hospitals, nursing homes, and assisted living authorized under the National Housing Act of 1934. The Office of Housing is also responsible for the “project-based” Section 8 program, which provides rental assistance for lower-income housing to participating owners and the Section 202 elderly housing and Section 811 disabled housing programs. This office interacts primarily with lenders, owners, managers, and developers.

The Assistant Secretary for Community Planning and Development (CPD)\(^\text{10}\) administers the Office of Community Planning and Development and is responsible for the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships program, the Neighborhood Stabilization Program, homelessness programs, and other community and economic development programs. CPD also oversees relocation compliance and environmental reviews across a variety of HUD funding programs.\(^\text{11}\) The CPD office interacts primarily with states, units of local government, and local public agencies.

The Assistant Secretary for Public and Indian Housing (PIH)\(^\text{12}\) is responsible for the traditional public housing program authorized under the U.S. Housing Act of 1937 as well as the HOPE VI program, the Choice Neighborhood Initiatives program, and certain existing Section 8 programs along with tenant-based programs and the Indian programs authorized by the Native American Housing Assistance and Self Determination Act of 1996, which reauthorized Indian programs authorized by the 1937 Act. PIH currently oversees the new Rental Assistance Demonstration (RAD) program, which seeks to convert public housing to vouchers or Section 8 programs to leverage private funding in order to refinance and redevelop projects.\(^\text{13}\) The Office of PIH interacts primarily with local public housing authorities and Indian housing authorities, as well as with developers, owners, and managers.

The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO)\(^\text{14}\) is responsible for the compliance and enforcement of federal civil rights laws, including the Fair Housing Amendments of 1988, and the Section 504 accessibility requirements as they relate to housing. This Assistant Secretary has the authority to

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11. Id. at 64,363.

12. PIH was authorized by the 1965 Act, supra note 6, at Section 4(e)(1)(a). Specific current responsibilities may be found at Delegation of Authority for the Office of Public and Indian Housing, 76 Fed. Reg. 47,224 (Aug. 4, 2011).

13. RAD was created by an appropriations act, Pub. L. 112-55, Nov. 18, 2011, and is not a permanent program. PIH has taken the lead in implementation. See HUD, PIH Notice 2012-18, Rental Assistance Demonstration—Partial Assistance and Request for Comments (March 8, 2012).

bring charges of discrimination on behalf of a complainant in instances where HUD
determines that reasonable cause exists.\textsuperscript{15} The Office of FHEO interacts primarily
with state fair-housing agencies and individuals who have claims of discrimina-
tion.

Other Assistant Secretaries at HUD have portfolios that cut across the four pro-
gram lines identified above and often provide support to the overall organization.
Assistant Secretaries administer the Offices of Policy Development and Research\textsuperscript{16}
and Congressional and Intergovernmental Relations, among other areas.\textsuperscript{17} The Sec-
retary occasionally also appoints an Assistant Secretary for Administration, but at the
time of this writing, the primarily internal responsibilities of that position are being
discharged by the Chief Operating Officer.\textsuperscript{18} Finally, the Chief Financial Officer is
responsible for HUD’s budget and financial management,\textsuperscript{19} the Chief Procurement
Officer serves as HUD’s contracting officer and oversees all procurement activi-
ties,\textsuperscript{20} and the Inspector General exercises independent audit authority under the In-
spector General Act.\textsuperscript{21} Like Assistant Secretaries, the President of GNMA (Ginnie
Mae) has programmatic responsibility.\textsuperscript{22} As discussed in greater detail below, the
Office of the General Counsel addresses all legal matters for HUD.

\section{Office of General Counsel}

Unlike many federal departments that include subagencies with their own indepen-
dent legal departments, such as the Departments of Transportation, Defense, and
Health and Human Services, HUD has one Office of General Counsel (OGC) that
addresses all legal issues for the entire Department.\textsuperscript{23} As the designated ethics offi-

\begin{itemize}
\item \textsuperscript{15} \textit{Id.}
\item \textsuperscript{16} \textit{Delegation of Authority for the Office of Policy Development and Research, 76 Fed. Reg.
73,934 (Aug. 30, 2011). This Assistant Secretary is responsible for undertaking and administering
programs of research, study, and testing for certain programs assigned by the Secretary.}
\item \textsuperscript{17} \textit{Delegation of Authority for the Office of Congressional and Intergovernmental Relations,
76 Fed. Reg. 62,594 (Oct. 7, 2011). This Secretary manages all relations with Congress except
appropriations; maintains a liaison with Congress, the White House, and the Office of Management
and Budget on legislative matters; and advises HUD officials on legislation of interest to HUD
and recommended legislative strategies.}
\item \textsuperscript{18} \textit{The Deputy Secretary delegated to the COO the responsibility to supervise information
technology, human resources, procurement, field office management, disaster preparedness, and
strategic planning. See Delegation of Authority to the Chief Operating Officer, 76 Fed. Reg.
34,745 (June 15, 2011).}
\item \textsuperscript{19} \textit{Delegation of Authority for the Office of the Chief Financing Officer, 76 Fed. Reg. 73,935
(Aug. 30, 2011).}
\item \textsuperscript{20} \textit{Designation of Chief Acquisition Officer and Senior Procurement Executive and
\item \textsuperscript{21} \textit{Delegation and Redelegation of Authority for the Office of the Inspector General, 75 Fed.
Reg. 61,166 (Oct. 4, 2010).}
\item \textsuperscript{22} \textit{Consolidated Delegation of Authority to the President of the Government National
\item \textsuperscript{23} \textit{Consolidated Delegation of Authority to the General Counsel, 76 Fed. Reg. 42,462 (July
18, 2011) [hereinafter the General Counsel Delegation].}
\end{itemize}
cial, the General Counsel has source-selection authority for outside legal services, has certain delegated enforcement authorities from the program Assistant Secretaries, is responsible for interpreting the authority of the Secretary and whether proposed issuances are consistent with such authority, directs all litigation concerning HUD, and acts upon appeals under the Freedom of Information Act. 24 The Office of the Inspector General has its own counsels, who provide advice to the OIG but not the Department.

As with other appointees at the Assistant Secretary level, the General Counsel is nominated by the President and confirmed by the Senate. The General Counsel is HUD’s chief legal officer and is responsible for providing all legal guidance to HUD. All outside legal services procured by and for HUD must go through the General Counsel, 25 who typically is served by several politically appointed Deputy General Counsels and several Special Assistants. The number and allocation of the political appointees are generally left to the discretion of the General Counsel and Secretary. However, the General Counsel’s office usually also includes a career Deputy General Counsel at the Senior Executive Service (SES) level. This career executive often becomes the Acting General Counsel during transitions. There are approximately eight Associate General Counsels at the SES level who provide counsel either across program lines or across HUD. 26 Each Associate General Counsel directs an office staffed with attorneys who are experts in their fields of specialization.

All of the approximately 600-person OGC staff, 27 other than the General Counsel and the political Deputies and Special Assistants, are career employees who work either at HUD’s Headquarters, Regional Offices, or Field Offices. The 10 Regional Offices are each headed by a politically appointed Regional Administrator. The Regional Administrators report to the Office of Field Policy and Management, but they have no specific program authority. 28 Instead, Regional Administrators coordinate between program areas, supervise Field Offices, raise issues to Headquarters, and serve as a liaison for regional constituents. Each of the 10 Regional Offices includes a Regional Counsel, a Housing HUB Director, a PIH Director, a CPD Director, and a FHEO Director.

25. General Counsel Delegation at 42,462.
26. For example, the Associate for Insured Housing, the Associate for Fair Housing, and the Associate for Assisted Housing and Community Development provide counsel across program lines, while the Associate for Litigation, the Associate for Legislation, and the Associate for Human Resources provide counsel across HUD. For a good overview of Office of General Counsel responsibilities, see About OGC, http://portal.hud.gov/hudportal/HUD?src=/program_offices/general_counsel/aboutogc For specific delegated authority of Associate General Counsels, see General Counsel Delegation, supra note 24, 42,465–66.
27. This includes the Departmental Enforcement Center, or DEC. See http://portal.hud.gov/hudportal/HUD?src=/about/principal_staff/general_counselor_kanovsky.
The Regional Counsel Offices generally have responsibility for FHA closings and other transactional work, field litigation, and fair housing enforcement, and are generally staffed with attorneys focused on those matters. The local Field Counsel offices are headed by an Associate Regional Counsel (formerly called Chief Counsel), include one to three attorneys, provide legal advice across program lines, and often spend considerable time on the transactional closing of FHA-insured loans. As noted above, HUD has approximately 80 Field and Regional Offices of varying sizes and responsibilities. Fifty of those offices are considered “full service” and have professionals who address the above-identified programs.29

III. ABOUT THE CHAPTERS

The HUD regulatory landscape is complex, with policy formally created by statutes and regulations. Secondary formal guidance is created by handbooks, notices, and other similar publications. While this secondary guidance may carry less weight under the terms of the Administrative Procedure Act and related litigation, it nevertheless provides significant insight into HUD’s existing practices and procedures.30 In addition, HUD informally establishes policies through letters, e-mails, phone calls, or other ad hoc resolutions to specific problems. This book seeks to help practitioners advance through the labyrinth as smoothly as possible and therefor explains and supplements, but does not replace, formal and informal HUD guidance.

A. FHA and Multifamily Programs

We start our journey through the labyrinth with a visit to the Office of Housing. This visit includes three chapters on FHA-insured financing, an overview of the Section 202 elderly housing program, and a meander through the well-known complexity of the 2530 approval process. These chapters, which focus on development, should be read in conjunction with Chapter 12, “Resolution of Troubled or Defaulted HUD-Insured Multifamily and Health-Care Loans.”

“FHA Multifamily Programs: General Overview and Recent Developments” (Chapter 1) addresses the range of FHA-financing options and processing methods. Use of FHA financing has increased dramatically in the wake of the credit tightening of the “great recession” of 2008. FHA has increased its underwriting standards and has been asked to insure more loans with sizes much greater than those historically experienced by FHA.31 The FHA landscape is constantly shifting with modifications.

29. In 1997, HUD reorganized the field offices as part of the 2020 Management Reform. The HUD 2020 Management Reform Plan; Notice of New HUD Field Structure, 62 Fed. Reg. 62,478 (Nov. 21, 1997) (identifying specific services and programs to be supported at each Field and Regional Office). Staffing, and thus services, have been reduced from that level, but the notice is a good overall guide.
to HUD policy, and recent changes include the first overhaul of multifamily closing documents in a quarter of a century, with related changes to the Multifamily Accelerated Processing (MAP) Guide and HUD closing guide.

“Multi-Family Housing Preservation” (Chapter 2) follows the FHA property life cycle by addressing preservation of programs and financing strategies for properties developed with FHA-insured funding. This chapter explains the statutory and regulatory framework authorizing the continued availability of these assets and discusses the variations of each program, including the Flexible Subsidy Program, ELIHPA, LHPRHA, and MAHRA.

“Healthcare and Hospital Financing” (Chapter 3) addresses the complexities of the FHA-insured health-care programs, including the nursing home/assisted-living programs and the hospital program. This chapter also discusses LEAN, the innovative method of processing that HUD introduced for the Section 232 nursing home program.

The Section 202 elderly housing program is one of the most popular and competitive programs available through HUD. “HUD Section 202 and Mixed-Finance Guide for Development and Operation of Supportive Housing for the Elderly” (Chapter 4) provides historical perspective, the evolutionary changes associated with this program, and a discussion of the program’s future.

Many HUD programs require an analysis of participants’ previous participation in HUD and other federal programs as part of the approval process. The 2530 requirements, procedures, and challenges are discussed in great detail in “The 2530 Previous Participation Approval Process” (Chapter 5). The chapter concludes with suggestions of issues to be addressed in the future, which discussion also serves as a guide to some of the thornier 2530 issues.

B. Community Planning and Department (CPD)

“Community Development” (Chapter 6) addresses the CDBG and HOME programs, which distribute block grant funds by formula to over a thousand communities and states throughout the country. This chapter also discusses recurring concerns with these two programs and concludes with a review of CPD homeless programs, including Supportive Housing and ShelterPlus Care.

“Emerging Neighborhood Stabilization Programs” (Chapter 7) narrows its focus to the three (to date) iterations of the Neighborhood Stabilization Program (NSP), a temporary program that originated with the federal stimulus programs that combines CDBG regulations with HOME use restrictions and other NSP-specific requirements. This chapter addresses strategic ways that NSP funds can be used on the project level, emphasizing affordability requirements, program income limitations, and other practical considerations. The chapter also articulates ways in which evolving interpretations of the NSP requirements may affect longstanding policies of the CDBG and HOME programs.
C. Public and Indian Housing

Further into the labyrinth, we find three key areas administered by the Office of Public and Indian Housing, with chapters focused on public housing development, public housing operations, and Section 8 housing.

“Public Housing Development—Mixed-Finance in the Context of Historical Trends” (Chapter 8) begins with a history of the public housing program, including its evolution from a model entirely based on public ownership with federal financing, and focuses on the complex financing and ownership structures used today in public housing development and revitalization projects. The chapter discusses in detail the complexities of mixed-finance development, leveraging of future streams of capital funds through Capital Fund Financing, and financial and operational issues.

“Public Housing Operations” (Chapter 9) identifies the web of regulations affecting virtually all actions of a public housing authority in administering its public housing program, from procurement to HUD funding, admission and occupancy to property standards, and monitoring.

“The Section 8 Rental Assistance Program” (Chapter 10) describes the basics of the project-based and tenant-based Section 8 rental assistance programs, the current funding mechanism for the programs, and the eligibility requirements for tenants. It also discusses the way in which HUD currently renews Section 8 project-based program contracts and the process by which a housing authority can use its Section 8 tenant-based assistance to provide owners, lenders, and investors with Section 8 Project-Based Voucher assistance.

D. Multi-program Issues, Compliance, and Enforcement

We round out our journey with a look at issues and requirements that apply across a number of program areas and funding sources.

“The Heat is On: Trimming HUD’s Energy Bill for Public and Privately Owned Assisted Housing” (Chapter 11) focuses on the high cost of providing energy to affordable housing and the efforts under way to reduce those costs in a myriad of program areas. This chapter addresses multiple programs and suggests that some programs are moving faster than others to provide tools to address rising energy costs.

“Resolution of Troubled or Defaulted HUD-Insured Multifamily and Healthcare Loans” (Chapter 12) addresses possible solutions to the challenges associated with asset resolution of troubled or defaulted loans.

“Cross-Cutting Requirements: Federal-Wide Requirements Impacting HUD Programs” (Chapter 13) addresses requirements such as Davis-Bacon, environmental approval, procurement, relocation, and subsidy-layering review, which are imposed by laws and regulations external to HUD program regulations but nevertheless apply to virtually all HUD-funded activities.