

The Department of Housing and Urban Development (HUD) and the Hurricane Sandy Rebuilding Task Force are launching a multi-stage, regional design competition entitled Rebuild By Design, which seeks to attract ideas that can be employed in the reconstruction of areas affected by Hurricane Sandy. HUD is running the competition under the authority of the America COMPETES Reauthorization Act of 2010, which requires agencies to publish a Federal Register notice containing, among other things, the competition's rules of eligibility and registration process. The Office of Management and Budget (OMB) has asked the Department to opine on whether applications received in response to the published Federal Register notice are subject to the Privacy Act. HUD believes that these applications fall outside the bounds of the Privacy Act for the reasons described below.

The notice that HUD submitted to OMB for Rebuild By Design contains a Request for Qualifications (RFQ), which requires competition entrants to submit a twelve page application containing the following information: 1) the list of team members; 2) the focus area the team has selected (the competition asks teams to choose from one of four specialized areas of concentration); 3) a summary of the team's strengths and relevant experience; 4) the team's relevant projects and expertise; and 5) the team's conceptual approach. HUD will choose between five and ten teams to advance to the second round of the competition based on their demonstrated abilities and past professional experience.

The notice solicits information from ten or more applicants and is therefore subject to the Paperwork Reduction Act, which requires agencies to assess the public burden associated with providing requested information. However, the information solicitation in the notice does not trigger the Privacy Act because it does not solicit records from individuals acting in their personal capacity. To the extent that the RFQ does solicit information from individuals, it asks them to respond as design "practitioners" acting in their professional capacity. For purposes of the Privacy Act, longstanding OMB guidance distinguishes between individuals submitting records in their personal capacity and individuals submitting records in the "entrepreneurial" capacity. 40 Fed. Reg. at 28951. Records falling into the latter category are not subject to the Privacy Act and are not required to be stored in accordance with the Act's provisions.

Here, the information request is limited to a call for professional credentials and descriptions of relevant experience. Furthermore, the identifiers used to categorize applications are based not on individual names, but rather on team names. Teams, according to the RFQ, are to be composed of "individual practitioners" or "offices," implying that individuals that submit information are treated essentially as businesses. For these reasons, HUD believes that applications received in response to the Rebuild By Design notice are not subject to the requirements of the Privacy Act.

If you have any further questions, please contact Donna Robinson-Staton, HUD Privacy Act Officer at donna.robinson.staton@hud.gov.