

## **HUD REGULATORY PLAN for FISCAL YEAR 2020**

The Regulatory Plan for the Department of Housing and Urban Development (HUD) for Fiscal Year (FY) 2020 highlights the most significant regulations and policy initiatives that HUD seeks to complete during the upcoming fiscal year. As the Federal agency that serves as the nation's housing agency, HUD plays a significant role in the lives of families and in communities throughout America. As a result, HUD is committed to addressing the housing needs of all Americans by creating strong, sustainable, inclusive communities, and quality affordable homes. Consistent with Secretary Carson's 2018-2022 strategic plan, HUD is working to strengthen the housing market to bolster the economy and protect consumers, meet the need for quality affordable rental homes, utilize housing as a platform for improving quality of life, build inclusive and sustainable communities free from discrimination; and transform the way the Department does business. The rules highlighted in HUD's regulatory plan for FY2020 align with the Secretary's 2018-2022 strategic plan. In this regard, HUD is highlighting its efforts to align and enforce HUD-assisted housing inspections and mitigation measures to consistently address housing-related health and safety hazards across HUD-assisted housing programs. In this effort, HUD intends to bring the benefits of advances in technology such as machine learning, process automation, and automated data exchanges which bring consistency and transparency to processes and results. Another significant goal of HUD's vision is to protect taxpayer funds. As stewards of the public trust, HUD's remains accountable to ensure the financial viability of the FHA mortgage insurance fund. As part of this effort, HUD is responsible for bringing clarity to the National Housing Act's prohibition on the provision of the homebuyer's required minimum investment by the seller of the property or any other person or

entity who benefits financially from the sale of the property, or any person who is reimbursed by any such person or entity.

The rules highlighted in HUD's regulatory plan for FY2020 reflects HUD's efforts to develop innovative approaches that anticipate the housing needs of the future, including the removal or revision of regulations that HUD has determined are outdated, unnecessary, or ineffective. The HUD's Regulatory Plan and Regulatory Agenda are consistent with the requirements of Executive Order (EO) 13771, Reducing Regulation and Controlling Regulatory Costs, 82 FR 9339 (January 30, 2017) and, Executive Order 13777, "Enforcing the Regulatory Reform Agenda 82 FR 12285 (February 24, 2017).

### **Implementation of National Standards for The Physical Inspection of Real Estate (NSPIRE)**

This rule would revise HUD's physical inspection standards for assisted and insured housing programs. Under the proposed rule, a single inspection standard would be adopted in place of the current differing standards that exist across some programs. HUD believes the inspection standard alignment would improve HUD's oversight and advance HUD's mission of providing tenants with decent, safe, and sanitary housing that is in good repair. This rule would fulfill the Consolidated Appropriations Act of 2016 directive to implement a single inspection protocol for public housing and voucher units. It would also comply with Section 38(c) 1 of the Economic Growth Regulatory Relief and Consumer Protection Act, which requires that program inspections apply existing physical inspection standards for projects assisted under Section 8 of the 1937 Act to small and predominantly rural Public Housing Agencies.

HUD currently uses an inspection model established in 1998, relying on Uniform Physical Conditions Standards (UPCS) laid out in 24 CFR part 5, Subpart G and managed under the

Department's Real Estate Assessment Center (REAC). Since then, the housing portfolios HUD inspects have undergone major transformations. A housing portfolio once dominated by government-owned properties has become largely populated by private entities. HUD has found that some property owners have become more interested in meeting minimal compliance thresholds than incorporating best practices that relate to property maintenance.

Upon review of HUD's current inspection standards, HUD believes that current standards for the assessment of existing housing need to be aligned to the livability and the residential use of the structures and that having too many indicators results in a highly complex task which increases the chance for error. Similarly, processes that were designed for a different generation of technology capabilities can benefit from current advances in that field such as machine learning, process automation, and automated data exchanges which bring consistency and transparency to processes and results. Additionally, a review of the items and deficiencies within the UPCS standards has shown that some rely too heavily on individual judgment, especially those oriented around the appearance of items that are otherwise functional. HUD intends this rule to address these concerns, decrease regulatory burden, and advance HUD's goal of providing tenants with decent, safe, and sanitary housing that is in good repair.

### **Aggregate Costs and Benefits**

Executive Order 12866, as amended, requires the agency to provide its best estimate of the combined aggregate costs and benefits of all regulations included in the agency's Regulatory Plan that will be pursued in FY 2020. HUD expects that the neither the total economic costs nor the total efficiency gains will exceed \$100 million.

### **Statement of Need**

The Consolidated Appropriations Act of 2016 directed HUD to implement a single inspection protocol for public housing and voucher units. Section 38(c) 1 of the Economic Growth Regulatory Relief and Consumer Protection Act requires that program inspections apply existing physical inspection standards for projects assisted under Section 8 of the 1937 Act to small and predominantly rural Public Housing Agencies. HUD's inspection model is outdated and could be improved to decrease costs while advancing HUDs' mission of providing decent, safe, and sanitary housing.

### **Risks**

Transitioning inspection procedures to a new system may cause confusion and logistical difficulty during the adjustment period. Increasing inspection standards may discourage program participants or potential program participants from participating. Use of new technology may create transition costs as new software is developed and fine-tuned.

### **Mortgage Insurance for Mortgage Transactions Involving Downpayment Assistance**

#### **Programs**

This rule would resolve continuing issues with downpayment assistance (DPA) programs when HUD mortgage insurance is involved, by defining what types of DPA programs comply with statute, particularly the prohibited sources provisions, which do not allow sellers or other entities that financially benefit from the transaction to provide DPA. The rule would establish a process to ensure that governmental entities that participate in DPA programs do not financially benefit from the mortgage transactions in which DPA is involved.

The Housing and Economic Recovery Act of 2008 (HERA) amended the National Housing Act to add a prohibited sources clause, under section 203(b)(9)(C). This requirement prohibits any portion of a borrower's minimum cash investment, as required by section 203(b)(9)(A), from

being provided by: (i) the seller or any other person or entity that financially benefits from the transaction, or (ii) any third party or entity that is reimbursed, directly or indirectly, by any of the parties described in clause (i). While section 203(b)(9)(C) prohibits assistance from a seller involved in the transaction as well as any party that receives a financial benefit from the transaction, FHA continues to receive questions regarding whether downpayment assistance programs operated by governmental entities are being operated in a fashion that would render such assistance prohibited.

This rule would address those issues by: (1) ensuring that DPA providers are complying with section 203(b)(9) of the NHA in its entirety, including the provisions against funds provided by a person or entity that financially benefits from the Transaction; (2) proposing a limit on allowable administrative costs that may be recovered to ensure that government DPA programs are not receiving a financial benefit that would render such assistance to be prohibited under NHA section 203(b)(9)(C); (3) stating which parties are permitted to provide DPA; and (4) establishing a process to ensure that participating governmental entities are in compliance with legal requirements. Consistent with this rule, only governmental DPA programs that have met the HUD requirements established in the rule, Immediate Family Members, and persons and entities providing gifts funds (as that term is described in this rule) would be eligible to provide DPA for a borrower's MRI. This proposed rule would also revise section 203.32(b), which concerns secondary mortgages and implements section 12 U.S.C. 1735f-6 of the National Housing Act, to clarify the meaning of "local government" to include political subdivisions of a State as that term is defined at NHA section 201(d)(12 U.S.C. 1707(d)), and under certain circumstances Federally Recognized Indian Tribes to facilitate their participation in DPA programs. The proposed rule would also revise § 203.32(c), to clarify that second mortgages

held by non-governmental mortgagees may not be used for DPA. Finally, the rule asks specific questions on which HUD would like public input.

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### **Statement of Need**

The rule is needed to ensure that governmental entities are acting consistent with the National Housing Act and are not accruing prohibited financial benefits. Obtaining financial benefit other than recouping costs from operating a downpayment assistance program would violate the statute and increase risk to the insurance fund.

### **Risks:**

There is a risk that entities may be more reluctant to provide downpayment assistance. However, since the cost of compliance with the rule is low, this is viewed as a small risk.