

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FALL 2020 STATEMENT OF REGULATORY PRIORITIES
FOR FISCAL YEAR 2021

Introduction

The Regulatory Plan for the Department of Housing and Urban Development (HUD) for Fiscal Year (FY) 2021 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 is committed to addressing the housing needs of all Americans by creating strong, sustainable, inclusive communities, and quality affordable homes for all. As a result, HUD plays a significant role in the lives of families and in communities throughout America.

HUD's 2018-2022 strategic plan focuses on rethinking American communities by refocusing on HUD's core mission. HUD is currently working to develop an innovative and more streamlined approach that anticipates the housing needs of the future while addressing current needs. HUD is working to modernize HUD's approach by leveraging private-sector partnerships, supporting sustainable homeownership, reducing barriers to affordable housing, encouraging affordable housing investments, and redesigning HUD's internal processes. HUD's regulatory plan for FY2021 reflects Secretary Carson's strategic plan and HUD's mission.

In addition to the highlighted rules in this plan, Secretary Carson directed HUD, consistent with Executive Order 13771, entitled "Reducing Regulation and Controlling Regulatory Costs," to identify and eliminate or streamline regulations that are wasteful, inefficient or unnecessary. The Secretary has also led HUD's implementation of Executive Order 13777, entitled "Enforcing the Regulatory Reform Agenda." Executive Order 13777 supplements and reaffirms the rulemaking principles of Executive Order 13771 by directing each

agency to establish a Regulatory Reform Task Force to evaluate existing regulations to identify those that merit repeal, replacement, or modification; are outdated, unnecessary, or ineffective; eliminate or inhibit job creation; impose costs that exceed benefits; or derive from or implement Executive Orders that have been rescinded or significantly modified. As a result of Secretary's Carson's direction, HUD's Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions lists 1 anticipated regulatory action and 5 deregulatory actions.

The rules highlighted in HUD's regulatory plan for FY2021 reflect HUD's efforts to develop innovative approaches that anticipate the housing needs of the future, including the removal or streamlining of regulations that HUD has determined are outdated, unnecessary, or ineffective.

Streamlining of HUD's Environmental Regulations

HUD's environmental regulations balance HUD's mission of creating strong, sustainable, inclusive communities and quality affordable housing with its statutory requirements under the National Environmental Policy Act (NEPA). HUD's regulations implement the NEPA, and are also in conformance with the regulations of the Council on Environmental Quality (CEQ), which recently updated its governing regulations, the first comprehensive update of CEQ's environmental regulations since 1978.¹ The CEQ regulations implementing NEPA require that each Federal agency comply with those regulations and adopt its own agency-specific procedures to do so. Generally, these regulations require that for every major Federal action significantly affecting the quality of the human environment, agencies must include in a detailed statement, by the agency's responsible official or the relevant local responsible entity, the environmental

¹ 85 FR 43304 (July 16, 2020).

impact of a proposed action. HUD's streamlining rule fulfills that requirement while reducing regulatory burdens and costs.

Under the current regulations, many projects that require an environmental assessment are highly unlikely to have a significant impact; accordingly, HUD's categorical exclusions are underinclusive, requiring a significance analysis for projects even when it is not needed. The proposed rule therefore would add or expand a number of categorical exclusions. These new categorical exclusions include financial transactions, such as payments on loans made or guaranteed by HUD and prepayment of certain low-income housing mortgages, as well as other activities that do not affect the environment such as repair and replacement of mechanical systems within buildings and transfer, conversion, award, or placement of HUD assistance without physical impacts. The existing categorical exclusion for tenant-based rental assistance would be revised to clarify that the exclusion applies to tenant-based leasing generally, as the environmental considerations would be the same. The existing exclusion for operating costs would add maintenance activities, defined as activities that slow or halt deterioration of a building, but which do not materially add to its value or adapt it to new uses. There would be an exclusion for activities to financially assist homebuyers to purchase existing dwelling units or units under construction, which would make home purchase less burdensome. The rule would also add a new category of exclusions for actions not subject to the National Historic Preservation Act. The exclusions would be for activities that have no potential to affect historic properties. These and other new and revised categorical exclusions will reduce burdens on housing providers without increasing adverse effects on the environment.

Pursuant to the updated CEQ regulations, the regulation would be updated to identify particular HUD activities or decisions not subject to NEPA. These include activities or decisions expressly exempt from NEPA under another statute and non-major Federal actions.

The rule also decreases burden by adding a provision that HUD or a responsible entity (as defined in the regulation) may adopt Environmental Reviews by another federal agency if the proposed projects and site conditions addressed in the environmental documents are substantially the same, as long as certain requirements are met. The requirements include that HUD: reviews the environmental review to be adopted; determines that the scope applies to the current proposal; concurs with the findings; determines that the project complies with HUD's environmental regulations and program requirements; and publishes the adoption as provided in CEQ regulations. This provision will create substantial cost savings for entities and reduce duplication of effort while ensuring that environmental impacts are considered.

In addition to these burden-reducing changes, the rule includes a number of additional clarifications to more clearly identify environmental review requirements, delineate permissible and prohibited activities during the environmental review process, and combine certain separate public participation requirements into one comment period. The public notice requirements would be modernized to allow as an option publication on an appropriate government website as an alternative to print publication. In place of the current defined "HUD approving official," which is generally a program-level official, in accordance with CEQ regulations, the rule defines a "senior agency official" as an Assistant Secretary or higher official designated by the Secretary of HUD to be responsible for HUD's overall NEPA compliance, in consultation with program officials. This change will improve Department-wide coordination, oversight, and accountability.

New categorical exclusions, notice period changes, reduced duplication, better defined requirements for reviews that are categorically excluded from NEPA and not subject to other environmental laws and authorities, and relaxing limitations on property acquisition during the environmental review process provide from \$12.4 million to \$21.4 million of quantified savings from reducing the burden of reporting and permitting projects to start sooner. Unquantified cost savings include greater flexibility for developers and streamlining for disaster recovery. The net effect of all changes is to decrease the costs of compliance.

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 2021. HUD expects that the neither the total economic costs nor the total cost savings from burden reduction and increased efficiency will exceed \$100 million. HUD believes that the rule will in the aggregate save costs by reducing the burden of environmental compliance.

Statement of Need

HUD's part 50 and 58 regulations have not been substantially revised since 1996. As a result, the environmental processes are outdated, or even inapplicable, based on the evolution of HUD's programs to meet the Agency's mission. Some of the current requirements of these regulations are unnecessary and overly burdensome, including environmental review requirements for actions that generally do not affect the environment, and duplicative review requirements. Both of these issues are addressed in this rule.

Executive order 13771 requires that agencies issue two deregulatory actions for each regulatory action. In addition, the Executive Order requires agencies to identify a cap on

incremental costs of regulations for the fiscal year. The cost savings created by this rule assist HUD in reducing its costs to meet that ceiling.

Additionally, the rule is needed because CEQ has revised its regulations to reduce unnecessary burdens and delays, and agencies are required to comply with the CEQ regulations.

Alternatives: None.

Risks: None.

TIMETABLE:

Action	Date	FR Cite
Proposed rule	10/00/2020	
Comment Period End	12/00/2020	
Final Rule		

Regulatory Flexibility Analysis Required: No
Small Entities Affected: Governmental jurisdictions
Government Levels Affected: No
Federalism Affected: No
Energy Affected: No
International Impacts: No

Acceptance of Private Flood Insurance for FHA-Insured Mortgages

This proposed rule would amend Federal Housing Administration (FHA) regulations to allow mortgagors the option to purchase private flood insurance on FHA-insured mortgages for properties located in Special Flood Hazard Areas (SFHAs), in satisfaction of the mandatory purchase requirement of the Flood Disaster Protection Act of 1973 (the FDPA). The FDPA in 1973 provided that no federal agency may approve any financial assistance for acquisition or construction in any Special Flood Hazard Area (SFHA) and in which the sale of flood insurance has been made available under the 1968 Act, unless the building or mobile home and any personal property is covered by flood insurance. Under the National Flood Insurance Reform

Act of 1994, the owner of a property located in a community participating in the National Flood Insurance Program, and mapped in a SFHA, must purchase flood insurance as a condition of receiving a mortgage backed by the Government Sponsored Enterprises (GSEs), Veteran's Administration (VA), United States Department of Agriculture (USDA), or Federal Housing Administration (FHA).

The Biggert-Waters Insurance Reform Act of 2012 (Biggert-Waters Act) further amended the Federal flood insurance statutes to encourage private-sector participation. The Biggert-Waters Act requires the Federal entities for lending regulation (the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA), and the Farm Credit Administration (FCA)), collectively, Federal regulators) to direct lenders to accept private flood insurance to satisfy the mandatory purchase requirement, instead of NFIP insurance, if the private flood insurance meets the conditions defined further in the statute. The Biggert-Waters Act also requires federal agency lenders and government-sponsored enterprises for housing to accept private flood insurance, as defined by the statute. On February 20, 2019, Federal regulators jointly issued a Final Rule implementing the private flood insurance provisions of the Biggert-Waters Act.

Currently, FHA's regulations regarding the flood insurance requirement do not permit private flood insurance as an option to satisfy the requirement to purchase flood insurance for properties located in an SFHA. This proposed rule would amend FHA regulations to allow owners the option to purchase private flood insurance on FHA-insured mortgages for properties located in SFHAs, consistent with the FDPA and in harmony with private flood insurance requirements under the Biggert-Waters Act. This would make FHA consistent with the GSEs

and the private market, provide greater consumer choice, and may give homeowners the opportunity to purchase flood insurance that may be more affordable than National Flood Insurance Program policies. The proposed rule would define “Private Flood Insurance” similar to the Biggert-Waters Act’s definition. The definition would ensure that private insurers can satisfy claims and that private flood insurance coverage is at least as broad as the coverage provided under the NFIP.

There are qualitative and quantitative benefits to the rule. Giving homeowners the option to purchase private flood insurance would prevent lenders’ refusal to accept flood insurance on FHA-insured mortgages and reduce housing costs to homebuyers associated with delay in home sale closings if there is a lapse in NFIP’s authorization. The annual estimated cost to affected homebuyers that could be prevented if NFIP lapses is approximately \$296,000. There would also be insignificant costs associated with modifying FHA policies and procedures to accept private flood insurance.

Qualitative benefits would include increased consistency between the rules governing FHA and GSEs for private flood insurance. Allowing for private flood insurance would increase consumer choice and remove a regulatory barrier for FHA lenders, who may not currently accept private flood insurance. Private insurers may be able to offer lower premiums for flood insurance and potentially increase affordability.

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 2021. HUD expects that neither the total economic costs nor the total efficiency gains will exceed \$100 million. Generally, HUD expects that the availability

of private insurance will lower premium costs for some homebuyers and reduce housing costs to homebuyers associated with delay in home sale closings if there is a lapse in NFIP authorization. While there may be some minor administrative costs involved in allowing for private flood insurance, they would be small and insignificant.

Statement of Need

The rule is needed to promote consistency of HUD regulations with statutory and industry standards and reduce regulatory restrictions on flood insurance for FHA-insured mortgages for properties located in SFHAs. This proposed rule would generally conform to the same rules governing the GSEs and other federal agency lenders for private flood insurance; in the process, ensuring that all homebuyers with federally backed loans have similar flood insurance options. In the event of a lapse in the NFIP, the option of private flood insurance may reduce the likelihood of delays in the processing of new originations.

Executive Order 13771 requires that agencies issue two deregulatory actions for each regulatory action. In addition, the Executive Order requires agencies to identify a cap on incremental costs of regulations for the fiscal year. This rule is a deregulatory action under the Executive Order, and a cost-saving rule that will reduce HUD's incremental regulatory costs for the fiscal year.

Risks:

The fee that is collected from NFIP insurance (the Federal Policy Fee or FPF) is used to fund floodplain mapping and management programs. If many homeowners choose private flood insurance, this could reduce the funds available for floodplain mapping and management programs.

TIMETABLE:

Action	Date	FR Cite
NPRM	10/00/2020	
Comment Period End	12/00/2020	
Final Rule		

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: No
Federalism Affected: No
Energy Affected: No
International Impacts: No