

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Plan for Retrospective Review of Regulatory Actions under E.O. 13563

I. INTRODUCTION

HUD plays a significant role in the lives of families and in communities throughout America. HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. Consistent with that mission, HUD has statutory responsibility for a wide variety of regulations. HUD's regulatory programs and initiatives help create suitable living environments, and help to ensure that all citizens have access to decent, safe, and sanitary housing. HUD's regulations also assist in the enforcement of the nation's fair housing laws. HUD regulations also govern the provision of housing and other essential support to a wide range of individuals and families with special needs, including homeless individuals, the elderly, and persons with disabilities.

On January 18, 2011, President Obama issued Executive Order 13563, "Improving Regulation and Regulatory Review."¹ The Executive Order requires federal agencies to seek less costly, less burdensome, more affordable, less intrusive ways to achieve policy goals and give careful consideration to the benefits and costs of those regulations. Agencies are directed to tailor their regulations to impose the minimal amount of burden on society to obtain regulatory objectives. The Executive Order also emphasizes the importance of meaningful public participation in the rulemaking process, and encourages agencies to increase their use of online technologies to simplify and facilitate participation for all stakeholders. Executive Order 13563 also requires agencies to coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.

The Executive Order recognizes that these principles should guide the federal government's approach not only to new regulations, but to existing ones as well. To that end, agencies are required to review existing significant regulations to determine if they are outmoded, ineffective, insufficient or excessively burdensome. Executive Order 13563 also requires that each agency develop and submit to the Office of Management and Budget's Office of Information and Regulatory Affairs a preliminary plan for periodically reviewing existing significant regulations so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives.

¹ The Executive Order was subsequently published in the Federal Register on January 21, 2011, at 76 FR 3821.

On March 2, 2011, at 76 FR 11395, HUD published a notice in the Federal Register inviting public comments, through May 2, 2011, to assist in the development of the plan required by the Executive Order and in identifying specific current regulations that should be the subject of HUD review. HUD received comments from 42 commenters, including nonprofit advocacy groups, private industry groups, housing authorities, and private individuals, amounting to more than 300 specific suggestions. Most of the comments were in regards to specific program regulations; however, HUD also received several comments on the retrospective review process itself. HUD solicited public comment on the Department's preliminary plan and list of candidate rules through a second Federal Register notice published on June 2, 2011, at 76 FR 31844. This plan follows publication of HUD's June 2, 2011, notice, and takes into consideration the comments received on the two Federal Register notices.

The appendix to this plan identifies the initial set of HUD regulatory actions being taken in response to Executive Order 13563 and the concerns raised by the commenters. HUD's review of the comments received in response to the Federal Register notices is ongoing and the list of rules will be expanded based on that ongoing assessment. HUD notes that many of the public comments requested changes that would require statutory amendments and, therefore, at this time HUD is unable to accommodate those suggested changes. Many of the comments also recommended changes to HUD's processes, as opposed to program requirements. HUD appreciates these comments and will continue to streamline these processes as its updates to its technological systems come on line.

The reforms listed in the Appendix promise to produce significant savings in terms of burdens. For example, one of the proposed rules would remove the time restrictions on the use of Federal Housing Administration (FHA) financing to purchase properties that are resold after the previous acquisition within certain time periods. Up until now, HUD has handled this issue through regulatory waivers, which have enabled FHA to insure 17,114 mortgages that would not have been eligible for FHA insurance otherwise. In addition, overall HUD real estate owned (REO) purchases and investor purchases have increased by 20 and 25 percent, respectively. Permanent codification of this policy will have a significant and positive impact on the availability of FHA mortgage insurance. Another example is the final rule to revise the application process for participation in HUD's mixed finance public housing development programs by simplifying and streamlining the application, review, and approval processes. The amendments will significantly reduce the document submission burdens on public housing agencies. HUD estimates that a potential maximum of \$7.5 million could be saved annually with the implementation of the final rule.

Executive Order 13563 calls not for a single exercise, but for "periodic review of existing significant regulations," with close reference to empirical evidence. It explicitly states that "retrospective analyses, including supporting data, should be released online wherever possible." Consistent with the commitment to periodic review and to public participation, HUD will continue to assess its existing significant regulations in accordance with the requirements of Executive Order 13563. HUD welcomes public suggestions about appropriate reforms. If, at any time, members of the public identify possible reforms to streamline requirements and to reduce existing burdens, HUD will give those suggestions careful consideration.

II. PLAN FOR RETROSPECTIVE REVIEW OF HUD REGULATORY ACTIONS

In accordance with Executive Order 13563, this document sets forth HUD's plan for the periodic review of its existing regulations to determine whether any of these regulations should be modified, streamlined, expanded, or repealed. As appropriate for a "look back" at existing regulatory actions, HUD will review regulations that have been in effect for a sufficient amount of time to warrant a fair evaluation, rather than revisiting recently issued rules. HUD's retrospective reviews will complement its ongoing efforts to improve the effectiveness of its regulations. HUD will continue to amend its regulations as needed to eliminate unjustified burdens and costs, to reflect policy determinations, or better to adapt to changing circumstances and market conditions.

A. HUD General Policy on Retrospective Regulatory Review

In accordance with the procedures established by this plan, HUD will undertake periodic review of its regulations. The purpose of this review is to assess whether HUD's regulations remain current, necessary, are appropriately tailored to the subject matter of the regulation, and achieve regulatory objectives without imposing unwarranted costs and burdens. HUD is committed to maintaining a culture of retrospective review. Where appropriate and consistent with applicable law, HUD will incorporate experimental designs in reviewing existing and prospective regulations and solicit the peer review of data underlying new or revised regulatory policies.

B. Role of the Office of General Counsel

The Office of General Counsel, as an independent office from the offices responsible for implementing regulations and as HUD's office with responsibility for overseeing the Department's compliance with Executive Orders and the legal requirements governing the federal rulemaking process, will be HUD's principal point of contact for the retrospective review of regulatory actions. The Principal Deputy General Counsel is HUD's Regulatory Policy Officer under Executive Order 12866, "Regulatory Planning and Review," and will oversee the work of the Office of General Counsel in this regard.

C. Public Input

Public input is a principal component of HUD's rulemaking process, and will be a principal component of HUD's retrospective regulatory review efforts. Executive Order 13563 emphasizes the importance of public participation, and it is HUD's policy to provide for meaningful public input in the rulemaking process.² The knowledge of the effects of regulations is widely dispersed in society, and members of the public have valuable information and perspectives on the usefulness and impacts of HUD's rules.

² See HUD's rule on rulemaking policies and procedures at 24 CFR 10.1.

HUD is taking the following steps to actively solicit the input of stakeholders and members of the general public in identifying specific current regulations that may be obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive and, therefore, should be subject to retrospective review:

1. Regulatory review website and e-mail inbox. HUD will establish a regulatory review website to solicit input and update the public on HUD's regulatory review efforts. The website, which will link to appropriate government-wide websites, will contain a link to this plan, to the list of candidate rules that HUD intends to review, as well as to other useful sites providing information on HUD rules and the federal rulemaking process in general. The website will direct interested members of the public to HUD's e-mail inbox at RegulatoryReview@hud.gov which parties may use, on an ongoing basis, to identify regulations that may be in need of review.

2. Solicitation for public input in HUD's Semiannual Regulatory Agenda. Section 4(b) of Executive Order 12866, "Regulatory Planning and Review," requires each department or agency to prepare semiannually an agenda of: (1) regulations that the department or agency has issued or expects to issue, and (2) rules currently in effect that are under departmental or agency review.³ HUD customarily includes the following solicitation for public comment in the preamble to its Semiannual Agenda of Regulations:

Since the purpose of publication of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about the Department's future regulatory actions, HUD invites all interested members of the public to comment on the rules listed in the agenda.

3. Solicitation for public input on HUD rules. When appropriate, HUD will add the following solicitation for comment in the "Findings and Certifications" section of the preamble to its rules issued for public comment:⁴

Retrospective Review of Regulatory Actions.

In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," HUD has reviewed the program regulations in their entirety in the development of this rule to evaluate their continued effectiveness in addressing circumstances for which the regulations were promulgated. HUD specifically solicits comments on whether, in addition to the regulatory changes contained in this rule, the program regulations should be modified, streamlined, expanded, or repealed so as to make the HUD's regulatory program more effective or less burdensome in achieving regulatory objectives.

³ Executive Order 12866 was originally issued on September 30, 1993 and subsequently published in the Federal Register on October 4, 1993, at 58 FR 51735.

⁴ As implied by its name, the "Findings and Certifications" section of the preamble to HUD's rules provides statements indicating HUD's compliance with the authorities governing the rulemaking process, including Executive Order 12866, "Regulatory Planning and Review," the Regulatory Flexibility Act, the Paperwork Reduction Act, the National Environmental Policy Act, and the Unfunded Mandates Reform Act.

4. Public meetings. HUD, as appropriate, will convene town hall meetings open to the general public and meetings with affected stakeholders to solicit public feedback on rules that may merit retrospective review.

5. HUD Ideas in Action. HUD, as appropriate, will make use of its idea generation tool, HUD Ideas in Action,⁵ to allow public stakeholders to submit ideas on regulations that should be reexamined. Users can then vote and submit comments on those ideas.

HUD Ideas in Action is designed to:

- Engage employees and stakeholders through an open and transparent process to ensure every employee has a voice in the way the agency and its operations evolve;
- Collect constant, fresh input and perspectives on how to improve HUD's ability to achieve its mission; and
- Disseminate information about new and existing programs, initiatives, and policies.

6. Working with state, local, and tribal governments. In accordance with President Obama's memorandum to the heads of executive departments and agencies dated February 28, 2011, entitled "Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments," HUD will work with state, local, and tribal governments to identify the best opportunities to realize efficiency, promote program integrity, and improve program outcomes, including opportunities, consistent with law, that reduce or streamline duplicative paperwork, reporting, and regulatory burdens and those that more effectively use federal resources across multiple programs or states.

D. Coordination with Other Forms of Retrospective Analysis and Review

HUD currently undertakes efforts to retrospectively review its regulations and will build upon those efforts in its implementation of Executive Order 13563.

1. Comprehensive review of regulations during development of amendments. It is HUD's practice to review regulations in their entirety when developing amendments to specific sections of those regulations. HUD program staff and legal counsel review the regulations to determine whether they are outmoded, ineffective, or excessively burdensome, and therefore should be amended or removed. For purposes of implementing Executive Order 13563, HUD will expand upon this current practice by, as noted, including language in the preambles to its rules advising the public that HUD has undertaken a comprehensive review of the relevant regulations and soliciting public comment as to whether further amendments are merited.

2. Manufactured housing consensus committee. The Manufactured Housing Consensus Committee (MHCC) is a statutory federal advisory committee charged with providing recommendations to the Secretary on the revision and interpretation of HUD's manufactured

⁵ See the HUD Ideas in Action website, at http://portal.hud.gov/hudportal/HUD?src=/open/innovation_ideas_in_action.

home construction and safety standards and related procedural and enforcement regulations. The MHCC was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended.⁶ The MHCC serves as an ongoing forum for soliciting stakeholder feedback on HUD's regulation of the manufactured housing industry.

3. Regulatory Flexibility Act. Section 610 of the Regulatory Flexibility Act (RFA) requires federal agencies to review regulations that have a significant economic impact on a substantial number of small entities within 10 years of their adoption as final rules.⁷ As an agency with a primary mission that revolves around the awarding of grants and other forms of assistance, HUD does not issue many rules having a significant economic impact on small entities, as defined by the RFA. However, in conducting the review of a regulation subject to section 610 of the RFA, HUD will also retrospectively review the rule for purposes of Executive Order 13563. In addition, HUD conducts an analysis of the impact on small entities for every rule that the Department publishes. This analysis helps to ensure HUD's commitment to the principles of the RFA in every regulatory issuance, even beyond the 10-year review.

Further, in accordance with President Obama's memorandum to the heads of federal executive departments and agencies dated January 18, 2011, entitled "Regulatory Flexibility, Small Business, and Job Creation,"⁸ HUD will, when initiating rulemaking that will have a significant economic impact on a substantial number of small entities, give serious consideration, consistent with law and regulatory objectives, to reducing regulatory burdens on small businesses, through increased flexibility. Such flexibility may take many forms, including:

- Extended compliance dates that take into account the resources available to small entities;
- Performance standards rather than design standards;
- Simplification of reporting and compliance requirements (as, for example, through streamlined forms and electronic filing options);
- Different requirements for large and small firms; and
- Partial or total exemptions.

E. Prioritization

HUD will consider the following factors, among others, in prioritizing rules for retrospective review. The following list is not exclusive, but provides examples of the types of factors that HUD will consider in determining whether a particular regulation merits retrospective review. HUD will make such determinations on a case-by-cases basis based on the specific factors for each rule.

1. Identified by the public. HUD will prioritize regulations for review that have been identified by affected stakeholders.

⁶ 42 U.S.C. 5403.

⁷ 5 U.S.C. 610.

⁸ The memorandum was subsequently published in the Federal Register on January 21, 2011, at 76 FR 3827.

2. Widely-used regulations. HUD recognizes that the effectiveness of its most widely-used or relied upon programs often depend upon the effectiveness of the regulations that serve as the foundation for the programs. Not only will the need for revision be more evident for such regulations, but any changes to those programs may have the greatest positive impact on HUD's mission. Examples of HUD's widely used program regulations include the Community Development Block Grants program (24 CFR part 570), the Federal Housing Administration single family and multifamily mortgage insurance programs (24 CFR parts 202, 203, and 207), the Public Housing Operating Fund program (24 CFR part 990), the Public Housing Capital Fund program (24 CFR Part 905), and the Housing Choice Voucher program (24 CFR part 982), to name a few.

3. Complexity and scope of regulations. HUD will consider the overall number, complexity, and structure of the regulations for a specific program in determining the frequency of retrospective review. HUD programs with few or closely linked regulatory requirements may lend themselves to a periodic comprehensive review of all regulatory requirements. Other programs, either because of the number of regulations or the far-reaching scope of the requirements, may be subject to more frequent or ongoing reviews, with each review focused on a particular component of the regulations. For example, HUD's public housing programs and multifamily assisted housing programs both provide rental assistance to lower income households. However, because of the governmental nature of public housing agencies, the regulations for the public housing program are more numerous and detailed. HUD may elect to comprehensively review all of the multifamily assistance program regulations once every few years, while, in the public housing context, it may be more appropriate for HUD to conduct ongoing reviews focused on specific regulatory requirements (such as the Public Housing Agency Plan requirements, the Operating and Capital Funds, and the Public Housing Assessment System requirements, among others).

4. Need for regulatory waiver. HUD will prioritize review of any regulation which becomes the subject of frequent requests for waivers by affected stakeholders, and HUD has determined that good cause exists for the granting of waivers.

F. Analysis of Costs, Benefits, and Reduced Regulatory Burden

HUD will analyze the costs and benefits (both quantitative and qualitative) of regulations selected for retrospective review where HUD determines, with OMB concurrence, that the rule is a significant regulatory action. HUD will also attempt to measure the reduction in regulatory burden resulting from the modification or repeal of a rule that was subject to a retrospective review. HUD posts the economic analyses for its rule on www.regulations.gov. For rules issued pursuant to Executive Order 13563 and this plan, HUD will also make the analyses available on its regulatory review website.

III. UPCOMING REGULATORY REVIEW

The Appendix to this Plan identifies the initial list of HUD rules initiated in response to Executive Order 13563. The Appendix includes rules governing Federal Housing Administration programs, including Single-Family and Multifamily Mortgage Insurance, Office of Public and Indian Housing programs, including Public Housing and Section 8, and Community Planning and Development programs.

IV. FOR FURTHER INFORMATION CONTACT

Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10282, Washington, DC 20410; telephone number 202-708-1793 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.