



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

**[Docket No. FR-5457-F-02]
RIN 2502-AJ03**

**Streamlining Inspection Requirements for
Federal Housing Administration (FHA) Single-Family Mortgage Insurance:
Removal of the FHA Inspector Roster**

AGENCY: Office of the Assistant Secretary of Housing – Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule streamlines the inspection requirements for FHA single-family mortgage insurance by removing the regulations for the FHA Inspector Roster (Roster). The Roster is a list of inspectors approved by FHA as eligible to determine if the construction quality of a one- to four-unit property is acceptable as security for an FHA-insured loan. The removal of the Roster regulations is based on the recognition of the sufficiency and quality of inspections carried out by certified inspectors and other qualified individuals. This final rule follows publication of a February 6, 2013, proposed rule, and takes into consideration the public comments received on the proposed rule.

DATES: Effective date: **[Insert date 30 days after date of publication in the FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Elissa Saunders, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9184, Washington, DC 20410-8000; telephone number

202-708-2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background – HUD’s February 6, 2013, Proposed Rule

On February 6, 2013, at 78 FR 8448, HUD published a proposed rule to streamline the inspection and home warranty requirements for FHA single-family home insurance. As part of this rule, HUD proposed to eliminate the Roster,¹ which lists inspectors, approved by HUD, to perform inspections in the limited circumstances when either: (1) a local jurisdiction did not already perform its own inspections for new construction, and issue building permits and certificates of occupancy; or (2) when the inspection of a structural repair or renovation was not performed by a licensed professional as specified by regulation. (See 24 CFR 200.170(b)). HUD originally established the Roster to standardize the inspection process for properties with FHA-insured mortgages. Before the Roster, cities and states developed their own building codes, which had little uniformity or consistency with each other. Now, however, the International Residential Code (IRC) is in use or adopted in 49 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.² The International Code Council (ICC), which developed the IRC, also certifies Combination Inspectors (CIs) and Residential Combination Inspectors (RCIs). To be certified by the ICC, CIs and RCIs must pass a rigorous set of examinations, which includes testing their knowledge of the IRC. As a result, there is no longer a need for HUD to maintain and administer its own standardization process for inspectors.

For local jurisdictions that do not provide building code enforcement and requisite documentation, the rule proposed to accept inspections by an RCI, who is also licensed or

¹ Codified at 24 CFR 200.170-200.172

² <http://www.iccsafe.org/wp-content/uploads/stateadoptions.pdf>

certified as a home inspector in accordance with the applicable state and local requirements governing the licensing or certification of such inspectors in the respective jurisdiction. For jurisdictions who have an absence of RCIs, the rule proposed to require lenders to obtain an inspection performed by a third party who is a registered architect, a professional engineer, or a trades person or contractor and has met the licensing and bonding requirements of the state in which the property is located.

As part of the same publication, HUD also proposed to eliminate its requirement that borrowers purchase a 10-year protection plan for all high loan-to-value mortgages in order to qualify for FHA mortgage insurance. HUD had combined the two proposals as they both involved streamlining requirements for FHA single-family mortgage insurance. However, the two proposals are distinct and the regulations unrelated. In addition to covering separate subjects, the regulations applied to different parties. The procedures and requirements related to the Roster applied to inspectors and lenders, while the regulations regarding 10-year protection plans applied to homebuilders, lenders, and borrowers. The public comments reflect this distinction, in that they treated these proposals separately, with the exception of expressions of general support for both proposals. In order to properly address the separate comments received on each proposal and to be more transparent about the how the regulatory changes will affect different parties, this final rule only deals with elimination of the Roster. HUD is addressing elimination of the 10-year protection plan requirement in a separate rule.

Interested readers are referred to the preamble of the February 6, 2013, proposed rule for additional historical background and explanation of the proposed regulatory changes.

II. This Final Rule; Change to February 6, 2013, Proposed Rule

After considering public comment, HUD is making one change to the February 6, 2013, proposed rule. As discussed above, HUD proposed to accept inspections from RCIs for local jurisdictions that do not provide building code enforcement and requisite documentation. This final rule provides that HUD will also accept inspections performed by CIs, who are subject to the same rigorous ICC requirements required for RCI certification, and have also passed tests in the same disciplines for commercial buildings. HUD determined that the change is warranted due to similarity in the certification requirements between RCIs and CIs. Moreover, as more fully discussed in the following section of this preamble, expanding the number of inspectors certified by the ICC that are eligible to perform inspections will help to address the concern expressed by a commenter that some jurisdictions lack a sufficient number of RCIs.

III. Discussion of the Public Comments Related to the Elimination of HUD's Inspector Roster

The public comment period for the February 6, 2013, proposed rule closed on April 8, 2013. HUD received 7 public comments, 5 of which provided comments on the elimination of the Roster requirement. These comments were submitted by the ICC, a housing trade association, a mortgage company, a homebuilder, and an individual.³ Below is a summary of the significant issues pertaining to the Roster raised by these comments, and HUD's responses to these comments.

In response to the general solicitation of public comments, HUD received the following comments and provides the following responses:

Comment: Include CIs as allowed inspectors. One commenter suggested that HUD accept inspections from ICC-certified CIs who have passed the required tests for RCI

³ The public comments on the proposed rule are available for download from the Regulations.gov website at the following link: <http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;dct=PS;D=HUD-2013-0011>

certification, as well as passed tests in the same disciplines for commercial buildings. The commenter wrote that this change would increase the pool of inspectors from 3,666 (RCIs) to 5,892 (RCIs and CIs), and help avoid confusion as to whether only RCIs meet the requirements of the rule, or whether those certified for both Residential and Commercial Inspection who are certified as Combination Inspectors also meet the requirements of the rule.

HUD Response. HUD has adopted the change suggested by the commenter. The final rule provides that in jurisdictions that do not provide building code enforcement and requisite documentation, the lender must, in order to ensure compliance with FHA requirements, select an RCI or CI certified by the ICC who is licensed or certified as a home inspector in accordance with the applicable state and local requirements. CIs are subject to the same rigorous ICC certification requirements as RCIs and, therefore, their inclusion is consistent with HUD's stated policy goals in accepting inspection performed by RCIs. Further, HUD agrees with the commenter that the change will expand the pool of qualified inspectors and avoid confusion.

Comment: With Limited Number of RCIs, Allow Original Loan Appraiser to Complete Final Inspection. One commenter wrote that due to the limited number of current RCI inspectors, the proposed process will be less efficient and more subjective than HUD anticipated. The commenter wrote that while the use of a building permit/certificate of occupancy may be feasible with existing residences, the timing of these related to new home construction would be problematic. The commenter wrote that with reduced options and precarious timelines, the opportunity for additional costs and closing delays will increase for homeowners. The commenter suggested that HUD allow the original appraiser to complete the final inspection. According to the commenter this is acceptable under Federal National Mortgage Association (Fannie Mae), United States Department of Agriculture, and United States Department of

Veterans Affairs guidelines. The commenter wrote that because mortgage lenders maintain an FHA approved appraiser list, or work with an appraisal management company which does so, the process would be an extension of an efficient and accepted process, which would continue to provide protections for both homebuyers and HUD.

HUD Response. HUD has not revised the rule in response to this comment. As an initial matter, HUD notes that inspections are only required where the local jurisdiction does not provide building code enforcement and documentation. HUD specifically solicited comment on the number of qualified RCIs. Based on the data provided by the ICC, HUD continues to believe there are sufficient number of ICC-certified inspectors to allow for inspections in the limited circumstances contemplated by the rule.⁴ As discussed in the preamble to the February 6, 2013, proposed rule, HUD believes that the overall effect of removing the Roster will be to increase the number of competent inspectors, since inspectors currently on the Roster will no longer have an advantage of the exclusive market power of inspecting FHA-insured homes. Moreover, HUD is amending the proposed rule to further expand the pool of eligible inspectors to include CIs. In the absence of such ICC-certified inspectors, the lender may obtain an inspection performed by a third party, who is a registered architect, a professional engineer, or a trades person or contractor, and who has met the licensing and bonding requirements of the State in which the property is located.

With respect to the suggestion that HUD allow appraisers to conduct the required inspections, HUD agrees that appraisers have always played a vital role in FHA's mission to provide affordable homeownership by accurately assessing the value of a home. While other Federal agencies may allow appraisers to conduct inspections to determine construction quality,

⁴ Please refer to the end of this section of the preamble for the information on the number of ICC-certified inspectors.

HUD continues to believe that limiting the conduct of required inspections to ICC-certified inspectors and other qualified, licensed and bonded professionals is the best means to safeguard FHA and the Federal taxpayer.

In addition to the general solicitation of public comments on the February 6, 2013, proposed rule, HUD specifically requested comments on two issues.

First, HUD advised that it had been unable to determine the number of jurisdictions for which there may be an absence of RCIs and specifically requested information on this issue. In response, the ICC advised that there are 3,666 RCIs and 2,226 CIs around the country, with nearly every state having at least 4 inspectors certified as RCIs or CIs. Massachusetts, Maine, North Dakota, South Dakota, Rhode Island, and Vermont each have only one certified inspector. However, the ICC said that in each of these states, there are additional individuals possessing three, and sometime four, of the required four underlying certifications to achieve the RCI, or seven or eight of the underlying certifications for the CI. The ICC said it believes that if this proposed requirement is implemented, many eligible inspectors will apply for appropriate certification. The ICC said it believes that there are sufficient numbers in every state to allow for inspectors in all of the 50 states, but that in some cases, nearby out of state travel may be required by the inspector.

In addition to the foregoing issue, HUD specifically sought comment on whether, for jurisdictions for which RCIs are not available, HUD should require the lender, in selecting a non-RCI, albeit an individual licensed and bonded under State law, to select a registered architect, engineer, trades person, or contractor with a minimum of 5 years' experience. HUD did not receive any comments in response to this issue.

IV. Findings and Certifications

Regulatory Review - Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulation and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule was determined to be a “significant regulatory action” as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order). The removal of these regulations is consistent with goals of Executive Order 13563.

The rule does not rise to the level of an economically “significant regulatory action” under section 3(f)(1) of Executive Order 12866. HUD expects the elimination of the national Inspector Roster to have economic benefits and costs. However, neither the economic costs nor the benefits of the elimination are greater than the \$100 million threshold that determines economic significance under Executive Orders 12866 and 13563. The preamble to the February 6, 2013, proposed rule at 78 FR 8453 -8454, provided a discussion of the anticipated costs and benefits of the regulatory amendments. Please see the below section on the summary of benefits and costs, which summarizes and updates the costs and benefits of the regulatory changes.

Executive Order 13771

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017. This final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the rule’s economic analysis.

Summary of Benefits and Costs of Final Rule

There are two effects of eliminating the FHA Inspector Roster requirement: a reduction in paperwork burden to the Federal Government and potential, but not probable, gains in consumer surplus from enhanced competition.

First, no longer requiring that an inspector be on the Roster creates savings by reducing the administrative costs necessary to maintain the Roster. HUD anticipates cost savings of approximately \$62,870. This estimate is based on the following: savings of \$46,350 for elimination of Applications for Fee or Roster Inspector designation forms and copy of state certification (based on 3,090 inspector applications or respondents times a response per respondent times 0.5 burden hours per response times at cost of \$30 per hour); savings of \$11,520 for elimination of the fielding with inspectors and data input into FHA Connection; and savings of \$5,000 for the elimination of maintenance of the Roster database.

Second, relaxing restrictions to entry of inspectors would expand the set of inspectors from which lenders may choose for the inspection of a home where the mortgage is to be insured by FHA. Inspectors currently on the Roster would lose the ability to exploit any market power conveyed by the current Roster requirements.

The market outcome (effect on price, quantity, and quality of service) of eliminating supply restrictions depends upon whether there is excess demand for inspector services. It appears that the Inspector Roster is not a binding restriction. Only a very limited number of

FHA loans would be affected by eliminating the Roster. FHA data reveals that the number of FHA-insured properties requiring an inspection by an RCI or other qualified individual where an RCI is unavailable represents a small percentage of total loans. During 2017, only 877 (0.07 percent) out of the 1,233,428 endorsed loans required the use of a Roster inspector. The average cost for Roster inspector services was estimated at \$200 in 2016. This fee is not significantly different (and not greater than) the average fee charged by inspectors. Given the small number of loans initially reserved to inspectors from the Roster and the lack of divergence in cost, the cost for inspector service would not be affected. However, an elimination of the Roster could result in a small transfer of business activity away from inspectors on the Roster.

The quality of inspection is not likely to suffer because of the elimination of the Roster. Current industry standards and local regulations are sufficiently rigorous to render HUD's standards redundant. To become an RCI, applicants must undergo a rigorous examination and certification process that is even more robust than the Inspector Roster qualification process. On the rare occasion that an RCI is unavailable in a particular jurisdiction, the professional qualifications and length of experience for other qualified individuals are sufficiently high thresholds to mitigate the concern of inadequate inspections.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulation Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800-877-8339.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Numbers 2502-0538 (Application for Fee or Roster Personnel Designation (form HUD-92563)), and 2502-0189 (pertaining to the Compliance Inspection Report (form HUD-92051) and the Mortgagee's Assurance of Completion (form HUD-92300)). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is a deregulatory action taken by HUD that will lower barriers to entry to FHA business by removing redundant professional certifications. As previously noted, an elimination of the Roster could result in a small transfer of business activity away from inspectors on the Roster, but there is no reason to believe this transfer will be significant. There is no detectable wage premium for inspectors on the FHA Roster, and the Roster has been used for less than 0.1 percent of FHA's loans in recent years. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the principal FHA single-family mortgage insurance program is 14.117.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs-housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, for the reasons discussed in the preamble, HUD amends 24 CFR part 200 as follows:

PART 200 – INTRODUCTION TO FHA PROGRAMS

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1702-1715z-21; 42 U.S.C. 3535(d).

2. In § 200.145, add paragraph (c) to read as follows:

§ 200.145 Property and mortgage assessment.

* * * * *

(c) For all new construction as well as structural repairs and/or renovations of existing properties, to the extent that an inspection is required to determine if construction quality of a one- to four-unit property is acceptable as security for an FHA-insured loan, the following requirements apply:

(1)(i) In areas where local jurisdictions provide building code enforcement and the requisite documentation, the lender shall provide a copy of:

(A) The building permit, or its equivalent, and a copy of the certificate of occupancy, or its equivalent; or

(B) A satisfactory inspection notice for work completed, or its equivalent.

(ii) The documentation provided under paragraph (c)(1)(i) of this section shall be considered satisfactory evidence of completion of the work.

(2) In jurisdictions that do not provide building code enforcement and requisite documentation, three inspections are required for new construction. For existing construction, only one inspection and certification of work completed for structural repairs and renovations is required. For both new and existing construction, the lender shall, in order to ensure compliance with FHA requirements:

(i) Select a Residential Combination Inspector (or its successor designation) or a Combination Inspector (or its successor designation) certified by the International Code Council (or its successor organization) who is licensed or certified as a home inspector in accordance with the applicable State and local requirements governing the licensing or certification of those jurisdictions that license or certify such inspectors in the respective jurisdiction. The lender shall provide a certification from such inspector that the new construction and/or structural repair or renovation work is completed satisfactorily and in compliance with any applicable building code.

(ii) In the absence of such Residential Combination Inspector and Combination Inspector, the lender shall obtain an inspection performed by a third party, who is a registered architect, a professional engineer, or a trades person or contractor, and who has met the licensing and bonding requirements of the State in which the property is located. The lender shall provide

a certification from such inspector that the inspector is licensed and bonded under applicable State law, and that the new construction and/or structural repair or renovation work is completed satisfactorily and in compliance with any applicable building code.

§§ 200.170 through 200.172 [Removed]

3. Remove the undesignated center heading “FHA Inspector Roster” and §§ 200.170 through 200.172.

Dated: June 26, 2018.

Brian D. Montgomery,
Assistant Secretary for Housing –
Federal Housing Commissioner.

[FR-5457-F-02]

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