



## U.S. Department of Housing and Urban Development

### Office of Housing

#### **Tribal Consultation on HUD's Proposed Rule on Mortgage Insurance for Transactions Involving Downpayment Assistance**

**January 25, 2022**

- Speaker 1: Welcome and thank you for joining today's tribal consultation on HUD's proposed rule for transactions involving down payment assistance. Before we begin, please ensure you've opened the WebEx chat panel by using the associated icon on the bottom right corner of your screen. Please note that all audio connections are muted until the comment session at the end of today's presentation. The chat is available for technical assistance. If you require technical assistance, please send a chat to the event producer. As a reminder, this conference is being recorded. With that, I'm going to turn the conference over to Kevin Stevens, acting director, Office of Single Family Program Development. Please go ahead.
- Kevin Stevens: Coming today. Again, I'm Kevin Stevens and I'll be walking us through today's webinar. To get us started, I would like to introduce Lopa Kolluri, principal deputy assistant secretary for housing to give our opening remarks. Lopa, floor's yours.
- Lopa Kolluri: Thank you, Kevin. And good afternoon, everyone. I'm Lopa Kolluri, HUD's principal deputy assistant secretary for the Office of Housing in the Federal Housing Administration. I am a senior leader here at HUD, responsible for the management of FHA single family, multifamily healthcare mortgage insurance programs. Combined, these programs account from more than 1.3 trillion of FHA insured mortgages. I also oversee the Office of Housing counseling and the Office of Manufactured Housing. First, let me thank all the tribal leaders and representatives for joining us today. I am honored and pleased to welcome you to this tribal consultation on HUD's proposed rule regarding mortgage insurance for transactions involving down payments assistance.

Let me start off by saying that under this administration and Secretary Fudge's leadership, we are dedicated to expanding and strengthening our engagement with tribal nations. We want to assure you that we are facilitating a truly meaningful consultation in multiple forms for your voice and your opinions to inform HUD's priorities. To emphasize this, we host did two tribal consultation listening sessions in January and February regarding housing counselor certification requirements. Over a 100 attendees participated in those sessions in January and February, including those representing 57 tribes or tribally designated housing entities. Many also supplied detailed and rewritten

feedback, which will inform our future rulemaking to promote greater access to HUD's counseling program in tribal communities.

I would like to thank HUD's Office of Native American programs for partnering with the Office of Housing on the January and February housing counseling sessions and for facilitating today's listening session. Our ONAP team has been instrumental in organizing the next hour and a half so that it is a meaningful opportunity for us to hear from you on this important topic. The administration and this HUD under the leadership of Secretary Fudge is committed to reducing the racial home ownership gap for underserved populations, including individuals and families and communities you represent. Amassing the funds for a down payment is one of the most significant barriers to home ownership for many households, particularly in historically underserved communities.

It is FHA's mission to facilitate affordable and sustainable home mortgage financing options available to those who have in many cases, been traditionally marginalized in the nation's housing system. This is why down payment assistance plays an important role in the FHA single family mortgage insurance programs. In fiscal year 2021, a record high share of FHA endorsements, more than 39%, were for loans with down payment assistance. We know that government entities, including tribes have a strong presence in administering down payment assistance programs. In fact, loans with down payment assistance from eligible government sources represented 15% of FHA fiscal year 2021 forward mortgage endorsements. We recognize that many tribal government programs that provide down payment sources of funds are often the critical piece needed for otherwise well qualified home buyers to achieve stability and wealth building that comes along with home ownership.

Our desire to provide clarity regarding the permissible structures and operations of these programs and to ensure statutory requirements are met is not a new endeavor for us and I know it's not a new topic for many of you. What is new is that any approaches that we take will be a result of a thorough and thoughtful dialogue with you, starting with a listening session today. Before I turn it over to our Office of Single Family Housing team, I will like to re reiterate that this webinar is designed so that all of us at HUD can broaden our perspective regarding down payment assistance proposed rulemaking. Our team will be listening intently and with great respect to your thoughts and comments. Thank you again for your time today and now let me turn the program over to Kevin Stevens from our Office of Single Family Housing.

Kevin Stevens:

Thank you, Lopa. And before we continue, I'd also like to mention, we have other folks here joined with us today listening in. Julienne Joseph, deputy assistant secretary for single family housing, as well as Julie Shaffer, associate deputy assistant secretary for housing, as well as members of our Office of General Counsel and as Lopa mentioned, the Office of Native American Programs are all with us today.

To get us started, I think it's important to take a look at what got us here and the need for this regulation before we get into what is the regulation about. And to do that, we need to look back at the history of down payment assistance within the FHA program. Since the National Housing Act first created what is now the Federal Housing Administration program, there has been a minimum down payment requirement associated with FHA programs. At first, it was established at 20%. Then through the years, lowered to 10%, 5%, 3% and it now stands at 3.5%. Now FHA has also historically permitted assistance within such minimum requirements from relatives, employers, nonprofits, governments and even borrowers' friends. However, FHA had not historically permitted such funds to be borrowed by the borrower or such down payment. However, in 1979, section 528 was added to the National Housing Act, which allowed for the borrowing of such funds from governments. The National Housing Act also contains certain language permitting borrowed funds from relatives to be used towards this.

Fast forward to the late 1990s and several nonprofit started to create programs that provided the down payment assistance that was ultimately funded by the seller of the property for which the FHA mortgage was used to purchase. These programs came to be known as Seller Funded Down Payment Assistance. Shortly after the introduction of these programs, FHA became concerned with the structure of such programs and the impact to the program from the potential increased risk that they entailed. At this time, FHA began to look at trying to limit this practice. Then in 2005, the General Accounting Office published a report highlighting the risk associated with such programs. Again, FHA looked to try to curb this activity. Then in 2008, as part of the Housing and Economic Recovery Act or HERA, Congress amended the National Housing Act to prohibit funds from the seller being used as down payment. This also prohibited funds from any other person or entity that quote, financially benefits either directly or indirectly from the transaction and more this in a second.

While the statutory changes from HERA were clear on the prohibition of seller funded down payment, FHA began after this introduction, FHA began to receive questions on the applicability of the prohibition of the any other person or entity that financially benefits piece. In particular, FHA was questioned on the impact of such prohibition to government structured down payment assistance programs. To address these concerns, HUD first published an interpretive rule in 2012 and several related mortgagee letters in the following years, providing guidance for the use of government DPA FHA mortgages. Subsequently, several audits were conducted that highlighted the need to provide additional clarity with acceptability of certain down payment assistance programs being offered. And to this extent, FHA had to issue further guidance in 2019 but never implemented and ultimately rescinded this guidance with the intent that any further guidance would be established through the rulemaking process, which of course brings us to where we are today in establishing a need for this proposed draft rule.

Now getting into the rule itself. As we stated in our letter to you, that hopefully was how you got to come to today's webinar, that you read that letter, the proposed rule seeks to address five major areas. First, the rule seeks to establish what would be considered a quote, financial benefit, that I mentioned in the context of the provision of down payment assistance, which would then render such assistance prohibited under the statute. Second and related to this, would be to establish a De Minimus level of funds that could be recuperated exceeding the amount of recuperation of the down payment assistance itself that would not constitute such a prohibited financial benefit. The rule also codify FHA's longstanding requirements that would prohibit parties from recuperating any DPA, i.e.. allowing for only bonafide gifts or secondary financing from eligible governments or family members as we mentioned. In cases where such a party does not have a specified statutory basis for the provision of funds, i.e.. the National Housing Act section 203(b)(9)(B) which is what I mentioned that references family members or the previously referenced section 528, were eligible government entities.

The rule will amend FHA's existing regulations at 203.32, to allow eligible federally recognized Indian tribes to provide secondary financing which can include a portion of the borrower's minimum required investment. This regulation currently references only federal, state or local government agencies and hope grantees. Lastly, as previously mentioned, the rule addressed a provision of down payment assistance by family members, regardless of any other relationship to the transaction. It's important to note that as structured, this rule does not establish any jurisdictional limitations for eligible government down payment assistance providers.

As we stated in our letter, while HUD seeks feedback on the aspects of the proposed rule, there are certain areas where we specifically are looking for such feedback. First is, what is a reasonable amount per transaction for the aforementioned De Minimus administrative cost over the amount of assistance that would constitute a financial benefit? How should HUD establish this amount? And to the extent that it needs to be adjusted, how often should HUD establish such cost?

Second, how can HUD effectively ensure that down payment assistance providers are complying with the prohibited sources section, i.e.. is requiring DPA providers to certify compliance with regarding financial benefits and the administrative costs an effective option? Or are there other options that HUD should pursue? To what extent would HUD's rulemaking potentially access to and the availability of down payment assistance and by extension, home ownership for potential FHA borrowers? To what extent would tribal DPA providers and tribal borrowers be affected differently than non-tribal DPA providers and borrowers? And finally, how can HUD ensure compliance with section 203(b)(9)(C) of the National Housing Act while not unnecessarily restricting or reducing available resources for homeowners, including first time and lower income individuals for which the FHA program was designed?

And with that, as mentioned, while we're happy to hear feedback that you have today, we also ask that you send comments in your written comments that you may have to the tribal consultation email box shown here. This email was also in the letter distributed to you so it should be easy to find. And we do say when we open it up to comments, we ask that you're considerate of participants and try to keep your comments to three minutes or less so that other have a chance for input and time permitting, then we can circle back to those that might need some longer time. We also ask that we prioritize time for any of the tribal leaders to get their comments in. With that, I think we can open it up.

Speaker 1: All right, as we move into the comment session, to enter the comment queue, please use the raise hand icon in WebEx. You'll hear a beep when your line is unmuted, at which point you may begin your comments. Again, keep them to three minutes or less. If you are audio only, you can dial #2 on your telephone keypad to enter the comment queue. All right, looks like we do have one person in the queue at the moment. Caller, your line is unmuted.

Clay Colombe: My name's Clay Colombe, I am the chief executive officer of Rosebud Economic Development Corporation, the economic arm of the Rosebud Sioux Tribe. Rosebud Sioux Tribe and REDCo appreciates the opportunity to engage in today's dialogue with HUD in order to better understand the general principles guiding the department's efforts to draft regulations related to the provision of the down payment assistance. However, as HUD is yet to share the text of any proposed rule, tribes are limited in their ability to provide meaningful comments and recommendations to the department. An additional round of direct tribal consultation, once there a specific language, is necessary to ensure HUD is living up to the letter and spirit of President Biden's stated commitment for regular meaningful and robust consultation.

I might mention that President Biden has made tribal consultation top priority of his administration. During his first week in office, the President reaffirmed this commitment by instructing all executive department and agency heads to engage in regular, meaningful and robust consultation with tribal officials and the development of federal policies that have tribal implications, as outlined in executive order 13175. We believe our DPA programs are consistent with the FHA mortgage program and promote the goal of the Biden administration to lessen the wealth gap that exists in this country. A robust consultation process will facilitate a better understanding of our programs. Thank you.

Speaker 1: All right. Thank you for your comment.

Kevin Stevens: Thank you.

Speaker 1: I'm not showing any other commenters in queue at this time. Again, if you would like to make a comment, please use the raise hand feature in WebEx to raise your hand virtually and I will unmute you or you can dial #2 on your telephone keypad if you're audio only. All right, we do have one commenter in queue.

Bobby Rauser: Hello, my name is Bobby Rouser and I'm with the Cedar Band of Paiutes. I'm a council member on the band council. Thank you for this webinar and for seeking input from their tribal nations and their leaders on this important matter. We believe that DPA programs are consistent with the FHA mortgage program and promote the goal of the Biden administration to lessen the wealth gap that exists in this country. I've got a few questions that I'll pose to you. You don't have to answer right off or now but when does HUD anticipate issuing a proposed rule? Once HUD issues the proposed rule, in order to provide sufficient time for tribal nations to analyze and provide comments on the proposal. We ask that HUD provide a comment period of at least 90 days in order to provide sufficient time for DPA program providers to make whatever changes to their programs that are necessary based on the final HUD rule, we ask that HUD provide a minimum one year period between when the final rule is published and when compliance with the final rule will be required. Thank you.

Speaker 1: All right. Thank you for your comment.

Kevin Stevens: Thank you.

Speaker 1: I'm not showing any commenters in queue at this time. Again, if you'd like to make a comment, please use the raise hand feature in WebEx or if your audio only please dial #2 on your telephone keypad.

(Silence).

I'm not showing any other commenters at this time. Once again, if you would like to make a comment, use the raise hand button in WebEx to enter the queue or dial #2 on your telephone keypad if you're audio only.

(Silence).

Kevin Stevens: All right, well, if we don't have any questions, we can end early. I was expecting to have some more questions.

Speaker 1: We do have another commenter that has just entered the queue. We have one commenter in queue and commenter, your line is unmuted.

Paul Terry: Yes, good afternoon. This is Paul Terry. I'm the president CEO of Cedar Band Corporation. One of our operating entities is CBC Mortgage Agency and we just want to make sure that there will be other tribal consultation. We don't suspect that this is the only tribal consultation that there will be since as was mentioned in one of the other caller's comments, we didn't receive notice of this meeting until just last Friday. We understand that it was dated the 12th of January but we received it last Friday so we haven't had a lot of time to prepare for this and we're trying to still wrap our heads around this language and this consultation.

We hope and we echo the comments that have been shared already that we want HUD and we expect HUD and we want to be a good partner with HUD to really have that meaningful and robust consultation with the tribes. And so we are hopeful that this is the opening volley and that there will be further consultation and that this is not the only opportunity for the tribes and tribal corporations to respond. And especially since we haven't seen the language. We hope that that once that language is crafted and it's submitted or sent out to the tribes, that that'll be the triggering event for any again, regular doesn't mean a one and done.

From our perspective, we hope it is regular. We hope it's meaningful. We hope it's robust consultation. And again, I'm taking this language from President Biden's statements from a year ago. Just wanted to share our thoughts again from Cedar Band Corporation, which is wholly owned by the Cedar Band of Paiutes. You just heard from Bobby Rouser, one of our council members. And so we hope that this is just again, the beginning process for this effort. I'm careful what words to use but I hope this is just our first opportunity to meet and that we will have meaningful consultation on a go forward basis once we receive that proposed language as well. Thank you for your time this afternoon.

Kevin Stevens: Thank you. And maybe Paul before we do end and again, more comments, please dial in. But put the last screen up there too, where comments can be sent. We're not just accepting comments today. Comments can be sent to the email box through March is when we had put out there to allow 60 days from when the was, was sent out for any comments, knowing that you might need time to take it back. And that this call itself was not the end all for the first part of this.

Speaker 1: All right. We have another commenter in queue. Commenter, your line is unmuted.

Sharon Vogel: Thank you. My name, Sharon Vogel. I'm the executive director of Cheyenne River Housing Authority in South Dakota. And we balance our housing development to promote both rental housing and home ownership opportunities. And we too cannot comment without knowing the language of the proposed rule. And so I would like to ask the same question that was asked as to when will the rule be issued? When can we expect that? And what's the timeframe that you're looking at? Thank you.

Kevin Stevens: Thank you.

Speaker 1: All right. Again, if you'd like to make a comment, please press the raise hand icon in WebEx to enter the queue or if you are audio only, you can dial #2 on your telephone keypad.

(Silence).

All right, we do have another commenter in queue.

Jackie Pata:

Hi. This is Jackie Pata of with Tlingit Haida Regional Housing Authority. Thank you for this opportunity to be able to provide some comment. I agree with the other commenters that it'd be great to see the draft proposed rule but in drafting it, I do want you to consider for Indian housing, some of the ways that we develop our housing and how we apply down payment assistance programs that we create and would like to make sure that we're not creating other administrative burdens or making rules that could make it difficult for us to provide the down payment with our homes. Many of us through our NAHASDA funds or through competitive resources, are building homes in remote parts of Alaska or remote parts in Indian country and the cost of living and the cost of construction is significantly different than it is in other communities that have more access to stores without having the challenges of the environment and transportation.

For example, majority of my communities, all of the communities, you can't get to by road either by plane or by boat and so we become creative when we want to develop home ownership programs and those home ownership programs still allow for home ownership that have come through these grant programs or subsidized programs and the way that we leverage them we use a lot of flexibility to be able to make sure that they feel like and still are a true mortgage program but that we've been able to buy them down to the point that a person could actually own the home. And I could give you some actual examples if you're more interested in seeing how some of the way that we structure the financing of those homes. But I guess my caution is for tribal programs, don't overregulate, give us the ability to be flexible and to provide the services that we need to be able to create and maintain true home ownership in Indian country. Thank you.

Kevin Stevens:

Thank you for that. And if we're waiting for more questions just while I've heard the theme here is we need to see the rule. Again, the purpose of this meeting is the first foray into gathering feedback before the final proposed draft rule is put together. This is the first step in the process before we finalize any of the draft of the proposed rule.

Speaker 1:

Once again, if you would like to make a comment, please select the raise hand icon in WebEx to enter the queue or if you are audio only, dial #2 on your telephone keypad.

(Silence).

All right, we do have another caller in queue. Caller, your line is unmuted.



Neil Whitegull:

Good afternoon. My name is Neil Whitegull and I'm with Ho-Chunk Housing and Community Development Agency in Wisconsin of the Ho-Chunk Nation. And I'm also the chairperson of the Great Lakes Inter-tribal Housing Association. And I would like to add to the comments that given enough time to review any proposed changes to down payment programs or how that would affect, especially the section 184 program and coordination of home ownership lending to on trust, specifically to trust land or near trusts land. Those would be really good to provide those comments and being aware of Biden administration's commitment to tribal consultation or meaningful consultation. It's often said at these types of meetings or consultations to give tribal the leaders, I think it was mentioned before an the initial conference, 57 THEs or tribes that provided, because there's over 567 tribes that number.

That's a very small number that have provided comments but to give tribes enough opportunity to provide input from tribal leaders and understanding that or that's meaningful consultation. Do applaud HUD's efforts to include us now but wanted to reiterate, there's a lot of tribes that have not been able to comment. But particularly back to, I think what was already mentioned from the different regions about what tribes are doing now and what we have been doing in efforts to increase home ownership opportunities for our tribes, to really evaluate that. And so it's the idea I heard De Minimus idea and not being able to figure out how that reflects on what we do now of providing down payment assistance to tribal members or to combine those numbers to home owners. That cost of a trust land home, to develop a trust land home. And Jackie had mentioned in Alaska, it's just an enormous number, sometimes much higher than fair market values and establishing those values.

The assistance that we combine with the different programs really makes big impacts for tribal members, especially if you don't have steady income or a traditional income for establishing payments for mortgages. Just to put those out there, to make sure your office is aware that Indian country really is different and through NAHASDA and working through ONAP, Section 184 has been greatly successful. And to kind of look at what has made that a success and to keep, hopefully we can continue with new regulations to make it even easier for tribal members to be homeowners. Thank you.

Kevin Stevens:

Great. Thank you for that. And there is, I think something I can say to that extent that I want to make it clear that this role that's being established is under the Federal Housing Administration guidance and under the statutes of the National Housing Act that pertain to the Federal Housing Administration. Section 184 program is not part of the Federal Housing Administration so it is outside of the rulemaking that we are discussing here.

Speaker 1:

All right. I'm not currently showing any commenters in queue but if you would like to make a comment, you can use the raise hand icon in WebEx to virtually raise your hand. You'll hear beep when your line is unmuted, at which point, please go ahead and give your comment. If you are audio only, you can dial #2 on your telephone keypad to enter the queue.

Kevin Stevens: And maybe just to mention, anyone's open to, to comments. I think we have plenty of time to hear from everyone based upon comments that we've had. If you're holding out for comments, we're fine taking comments from anyone.

Speaker 1: All right. Looks like we do have a commenter on the phone. Caller, your line is unmuted.

Todd Francis: Hi. My name is Todd Francis and I'm with Native Community Capital. We're based in Laguna, New Mexico. We also have an office in Tempe, Arizona and we are a licensed mortgage lender in Indian country, mostly for New Mexico and Arizona right now. And I wanted to just ask a question about the De Minimus admin fee that is being, I guess, proposed. Is that a fee to cover the cost of delivering the down payment assistance?

Kevin Stevens: I think I can answer that. That is the concept. As we kind of mentioned in the outline is what amount of De Minimus fee over and above the recuperation of the down payment itself would be the right amount to not be considered a financial benefit?

Todd Francis: Okay, great. That's what I thought it meant. I have a 20 year history in working with a community development financial institution, specifically in the home ownership area for low and moderate income families. And I am very familiar with the different types of down payment programs that have existed during that period. What I wanted to say is, in my experience, if the admin fee that is offered isn't going to cover the cost of the underwriting for the program, the program is not going to be promoted very well to the very families that need the assistance to get into their first home. I just wanted to say that it needs to be a fair amount to cover the cost of running the program and typically the programs that are targeted for low moderate income families are very expensive to run.

And that's because a lot of them need credit repair and they're not typically immediately ready to get into their first home so it usually takes an inordinate amount of time to get them mortgage ready, maybe several months before they can even qualify for a loan. And so I think that that needs to be factored into the admin cost, just as well as the underwriting. The nature of the industry is that you have a lot of professionals, pricey professionals, who do this work and you just can't get around that cost. Also with the regulatory changes in the banking industry, you can't get around the compliance costs. And so I just want to make sure that people are aware of the fact that it is expensive to run these programs, even if the DPA is a small amount, like a \$1,000 per family or it's \$20,000 per family, the same amount of work goes into providing the DPA to one family.

And so the cost is going to be the same, no matter what the size of the DPA is. And I just ran some rough calculations and I think to provide assistance for one family, like I said, regardless of the price, that the amount of assistance, I think you're looking at easily, a \$1,000 per assistance. Whether, like I said, whether it's a \$1,000 or whether it's \$20,000. I think that's roughly the investment on

behalf of the lender, could be a CDFI lender, community development financial institution like us or it could be some other lender who's administering the program but I just didn't want that fact overlooked is that it's very expensive to run these programs and the program will not be promoted very well if the lenders are not adequately compensated. Thank you.

Kevin Stevens: Thank you.

Speaker 1: All right. I'm not showing any other commenters in queue at this time. Again, if you would like to make a comment, you can use the raise hand icon in WebEx to raise your hand. You hear beep when your line is unmuted, at which point please then go ahead and state your comment. You can also, if you're audio only, dial #2 to enter the comment queue.

(Silence).

All right, I'm not showing any other commenters at this time.

Kevin Stevens: All right. Well, thank you. And again, I'll put up the final slide again. If you have any comments, please send them to the email box. We'll be taking not just the comments from today but all comments received. And considering those, like I said before, we draft the proposed rule where that's finalized.

All right. We don't have any other further comments. Thank you for your time today. It was meaningful. We heard the feedback and we will take that away as we develop to you to engage.

Speaker 1: All right. That concludes our conference. Thank you for using Event Services. You many now disconnect.