



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

FEDERAL HOUSING ADMINISTRATION

SINGLE FAMILY HOUSING



Tribal Consultation

HUD's Proposed Rule for Transactions Involving Downpayment Assistance

January 25, 2022

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Development



OFFICE OF SINGLE FAMILY HOUSING



Agenda

Introductions

Opening Remarks

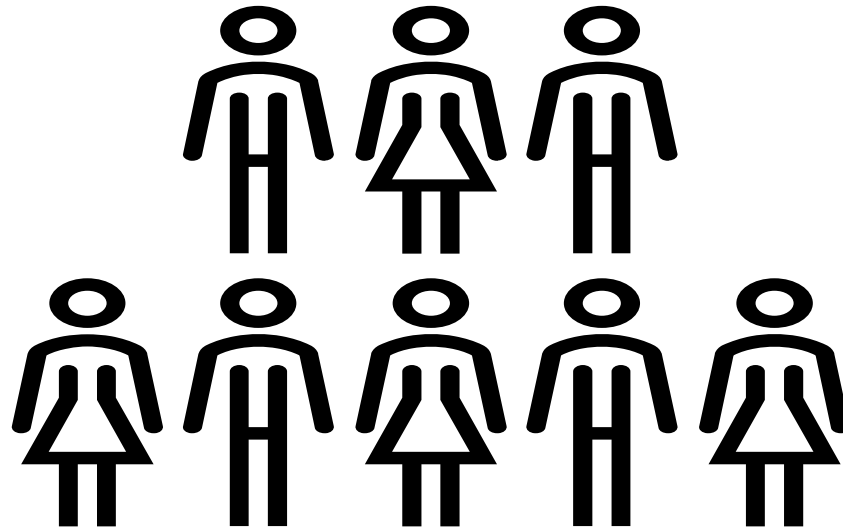
Background-History

Draft Proposed Rule

Next Steps



Introductions



Opening



Background- History



Background-History

- FHA has historically permitted downpayment assistance from relatives, employers, tax-exempt nonprofit organizations and government entities.
- **1979-** Section 528 added to the National Housing Act (NHA) to allow for governmental secondary financing.
- **1997-1998-** Non-Profit programs created to utilize Seller Funded Down Payment Assistance (SFDPA).
- **2005-** GAO publishes report on the risk associated with SFDPA.
- **2008-** The Housing and Economic Recover Act (HERA) amends the NHA to prohibit DPA from:
 - The seller or any other person or entity that financially benefits from the transaction, or
 - Any third party or entity that is reimbursed, directly or indirectly, by any of the parties described above



Background-History cont.

- FHA continues to receive questions on the applicability of the DPA prohibitions in relation to governmental DPA programs.
- **2012-** HUD publishes Interpretive Rule regarding the applicability of NHA section 203(b)(9)(C) to governmental DPA programs.
- **2013-** FHA issues ML 2013-14 to provide guidance on documenting DPA from governmental DPA programs.
- **2014-** FHA issues ML 2014-08 to provide further guidance on non-profits assisting governmental entities with secondary financing used as DPA.
- **2015- 2017** HUD OIG issues several audit finding related to FHA requirements for DPA and HUD oversight of DPA programs.
- **2019-** FHA issues ML 2019-06 to provide further guidance on governmental DPA but rescinds implementation in ML 2019-12.



Draft Proposed Rule



Draft Proposed Rule Outline

1. Ensure DPA providers comply with section 203(b)(9) of the National Housing Act (NHA) by ensuring they are not receiving a financial benefit as prohibited by section 203(b)(9)(C).
2. Provide that a De Minimis Administrative Cost over the amount of the assistance would not constitute a prohibited financial benefit.
3. Codify FHA's historical requirement that only DPA funds provided by eligible persons and entities providing cash or its equivalent (i.e., gifts, sweat equity) are permissible to cover any portion of a Borrower's minimum required investment.
4. Amend 24 CFR 203.32(b) to codify that Federally Recognized Indian Tribes are eligible to provide secondary financing which includes a Borrower's minimum required investment.
5. Codify requirements addressing DPA made by family members consistent with the provisions of NHA section 203(b)(9)(B) of the NHA.



Draft Proposed Rule- Feedback

1. What is a reasonable amount per transaction for De Minimis Administrative costs over the amount of the assistance that would not constitute a financial benefit prohibited under section 203(b)(9)(C) of the NHA? How should HUD establish the amount of administrative costs? How often should HUD establish such costs?
2. How can HUD effectively ensure that DPA Providers comply with section 203(b)(9)(C) of the NHA? Is requiring DPA Providers to certify compliance regarding Financial Benefits and De Minimis Administrative Costs an effective option?
3. To what extent would HUD's rulemaking potentially impact access to, and availability of, DPA and, by extension, homeownership for potential FHA borrowers? To what extent would tribal DPA providers and tribal borrowers be affected differently than non-tribal DPA providers and borrowers?
4. How can HUD ensure compliance with section 203(b)(9)(C) of the NHA while not unnecessarily restricting or reducing available resources for potential homeowners, including first-time and low-income individuals?



Comments

You may submit your comments to HUD by March 13, 2022, via e-mail to HUDRegsTribalConsult@hud.gov.

