

other than safety or effectiveness) voluntarily convert their labeling to PLR format and submit it to FDA for approval.<sup>8</sup> FDA intends to identify and prioritize certain drugs and drug classes based on public health impact (e.g., most prescribed, higher risk).

As part of the initiative, FDA is considering, through the use of a Government contractor, providing PLR conversion resources and services, including preparation of draft PLR labeling for applicants who request FDA's assistance to convert labeling to PLR format. For draft labeling converted to PLR format by a Government contractor, FDA would review the draft labeling prepared by the contractor and then send the applicant the proposed draft PLR format labeling. The applicant would then submit a labeling supplement to FDA with its proposed PLR format labeling (which may include proposed revisions to the draft PLR labeling). It should be emphasized that the application holder always bears responsibility for the content of its product labeling, and FDA's provision of contract resources is intended to facilitate conversion to the PLR format.

This initiative differs from the original PLR implementation plan in the final rule in that the Agency is not proposing rulemaking at this time. Rather, FDA would like to explore a voluntary approach to PLR conversions with NDA and BLA holders for drugs approved before June 30, 2001, and ANDA holders for drugs for which the NDA for the RLD has been withdrawn. In light of the public health benefit realized by labeling in PLR format, and previous interest by many ANDA holders in converting labeling for their drug products to PLR format, FDA anticipates that application holders will be interested in participating in this voluntary approach to enhance communication of information about the drug's safe and effective use through product labeling.

To determine the best approach to accomplish the objectives of this initiative, FDA is considering performing a pilot project to identify best practices and to standardize the approach for voluntary PLR format

conversions. FDA is seeking interested applicants with NDAs, BLAs, or ESs approved before June 30, 2001, and generic drugs for which the NDA for the RLD has been withdrawn to voluntarily participate in this pilot project.

### III. Establishment of a Docket and Request for Comments and Information

FDA is soliciting public comments on the Prescription Drug Improvement and Enhancement Initiative. FDA is specifically seeking feedback on the following:

1. What specific feasibility issues or other factors should FDA consider in its proposed pilot project and implementation of the Prescription Drug Labeling Improvement and Enhancement Initiative?

2. What factors should FDA consider in identifying and prioritizing drugs and/or drug classes for voluntary PLR conversions?

3. What approaches would application holders find helpful in facilitating voluntary PLR conversions for the specified drugs or drug classes? For example, please comment on the following approaches for communicating with applicants:

- Inquiry letter that identifies a drug proposed for PLR format conversion and requests information from the application holder regarding its preferred approach for possible PLR conversion (i.e., application holder or Government contractor)?

- Supplement request letter with draft labeling that has been converted to the PLR format attached?

4. For generic drugs for which the NDA for the RLD has been withdrawn, what procedures should FDA use to harmonize feedback from multiple ANDA holders on proposed draft labeling in the PLR format?

5. Would your company be interested in participating in the pilot project and the broader Prescription Drug Improvement and Enhancement Initiative? Why or why not?

Suggestions, recommendations, or comments should describe relevant considerations that may impact the feasibility or implementation of the initiative or the impact the initiative may have on prescription drug labeling issues. We also encourage commenters to include recommendations on how such prescription drug labeling issues could be addressed.

FDA will consider all suggestions, recommendations, and comments; however, the Agency will not respond directly to the person or organization making the suggestion, recommendation, or comment.

### IV. Comments

Interested persons may submit either electronic comments information regarding this document to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see ADDRESSES). It is only necessary to send one set of comments or information. Identify comments or information with the docket number found in brackets in the heading of this document. Received comments or information may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

Dated: January 31, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013-02528 Filed 2-5-13; 8:45 am]

BILLING CODE 4160-01-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 200 and 203

[Docket No. FR-5457-P-01]

RIN 2502-AJ03

### Streamlining Inspection and Warranty Requirements for Federal Housing Administration (FHA) Single-Family Mortgage Insurance: Removal of the FHA Inspector Roster and of the Ten-Year Protection Plan Requirements for High Loan-to-Value Ratio Mortgages

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would streamline the inspection and home warranty requirements for FHA single-family mortgage insurance. First, HUD proposes to remove 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. HUD's regulations currently require the use of an inspector from the Roster as a condition for FHA mortgage insurance where the local jurisdiction does not perform necessary inspections. HUD's proposal to remove the Roster regulation is based on the recognition of the sufficiency and quality of inspections carried out by certified inspectors and other qualified individuals. Second, this proposed rule would also remove the regulations

<sup>8</sup> See §§ 314.150(a) and (b). An NDA holder that has discontinued marketing a drug product, but has not requested withdrawal of the NDA, must still comply with applicable statutory and regulatory requirements. Such requirements include, for example, submission of an annual report (including a brief summary of significant new information from the previous year that might affect the safety, effectiveness, or labeling of the drug product, and a description of actions the applicant has taken or intends to take as a result of this new information) and, if appropriate, proposed revisions to product labeling.

requiring 10-year protection plans in order to qualify for high loan-to-value (LTV), FHA-insured mortgages as a condition of closing for newly constructed single-family homes. The Housing and Economic Recovery Act of 2008 (HERA) removed the statutory requirement for a warranty plan and other special requirements for high LTV mortgages. HUD, however, is retaining the requirement that the Warranty of Completion of Construction (form HUD-92544) be executed by the builder and the buyer of a new construction home, as a condition for FHA mortgage insurance.

**DATES:** *Comment due date:* April 8, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0001.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for

public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (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. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Karin Hill, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, 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. Executive Summary**

Through FHA, HUD insures mortgages made by qualified lenders to people purchasing or refinancing a primary residence. The National Housing Act (12 U.S.C. 1709 *et seq.*) authorizes HUD to provide mortgage insurance so that qualified borrowers may use the insured mortgage to finance the purchase of new or existing one-to-four unit (single-family) housing. FHA's single family mortgage insurance is an important tool through which the Federal Government expands homeownership opportunities for first-time homebuyers and other borrowers who would not otherwise qualify for conventional mortgages on affordable terms, as well as for those who live in underserved areas where mortgages may be harder to get.

Under its statutory authority, HUD has issued various regulations that govern the inspection and warranty requirements of these FHA-insured mortgages. Since the promulgation of these regulations, the quality of housing and building technology has improved significantly. In addition, local jurisdictions have adopted more uniform building codes, while more vigorously enforcing their building codes. As a result, HUD recognizes that some of its former requirements for mortgage insurance are no longer necessary to protect lenders against the risk of default. With this rule, HUD proposes to remove those requirements it no longer believes to be necessary,

thereby reducing some of the administrative burden on both homeowners and HUD, while also producing dollar savings for homeowners who obtain FHA-insured mortgages.

First, HUD proposes to eliminate its national Inspector Roster (Roster). The Roster is a list of 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 repair or renovation was not performed by a licensed professional as specified by regulation. See 24 CFR 200.170(b). HUD originally created 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, and the U.S. Virgin Islands. The International Code Council (ICC), which developed the IRC, also certifies Residential Combination Inspectors (RCIs). To be certified by the ICC, RCIs must pass a rigorous set of examinations, which includes testing their knowledge of the IRC.<sup>1</sup> As a result, there is no longer a need for HUD to maintain and administer its own standardization process for inspectors.

Second, HUD proposes to eliminate its requirement that borrowers purchase a 10-year protection plan for all high loan-to-value (LTV) mortgages in order to qualify for FHA mortgage insurance. In 1979, when Congress authorized HUD to insure mortgages with a high LTV ratio (in excess of 90 percent of the appraised property value), Congress also required that, to qualify for FHA insurance for such mortgages, borrowers would have to purchase a consumer protection plan or warranty plan acceptable to HUD. (Pub. L. 96-153, 93 Stat. 1101, approved December 21, 1979.) But in 2008, Congress eliminated the requirement of purchasing a consumer protection plan or warranty plan. (Pub. L. 110-289, 122 Stat. 2654, approved July 30, 2008). While HUD may still keep the requirements in place, HUD is no longer statutorily mandated to do so. Upon evaluation, HUD believes that the significant improvements in building technology and the quality of housing, as well as

<sup>1</sup> See <http://www.iccsafe.org/Accreditation/Documents/ComboCertificate.pdf>.

the adoption of uniform building codes and local jurisdictions' more stringent enforcement of building codes, mitigate HUD's previous concerns about needing to protect property owners from defects in workmanship and materials.

HUD expects the elimination of these two requirements to have an anticipated total savings of \$29,569,957. By eliminating the Roster, HUD expects to save approximately \$42,770 in administrative costs. In addition, lenders will have a greater number of inspectors to choose from, thereby increasing competition among qualified inspectors and potentially driving down the fees that inspectors charge lenders. Inspectors remain subject to other certification requirements, therefore minimizing any potential risk of unnoticed structural defects in

properties secured by FHA-insured mortgages. Because this risk is very small, and because the universe of loans subject to the inspector roster requirement is also very small, HUD believes the costs of removing this requirement to be minimal.

By eliminating the 10-year warranty requirement, HUD anticipates saving \$10,601 in administrative costs. Homeowners are expected save approximately \$29.4 million from no longer being required to purchase a 10-year warranty plan in order to secure an FHA-insured mortgage. Providers of warranty plans are also expected to save \$132,066 from the reduced paperwork burden of submitting required protection plans to HUD for approval. For those homeowners who still choose to purchase a warranty plan, they can

choose from the entire market of warranty providers and not just those approved by HUD. Allowing homeowners to choose any provider they wish should increase competition and, possibly, drive down the prices of the protection plans. The costs of eliminating the warranty requirement are expected to be minimal. The increased quality of construction materials and the standardization of building codes have greatly mitigated concerns of defective construction that might result from eliminating the warranty requirement. Moreover, the number of potential homes affected by the elimination of the warranty requirement is very limited.

Summary of savings resulting from proposed regulatory changes:

**FHA Inspection Roster**

Administrative Costs Savings:	
Revised Administrative Costs Savings .....	\$42,770
Elimination of the review of applications .....	11,250
Elimination of the fielding with inspectors and data input into FHA Connection .....	11,520
Elimination of the maintenance of the Roster database .....	5,000
Elimination of the application HUD-925631 (Application for Fee or Roster Personnel Designation) and associated burden hours .....	15,000

**10-Year Warranty Plan**

Elimination of the warranty plan (Saving to Homeowners) .....	29,352,615
Administrative Costs Savings:	
Revised Administrative Cost Savings .....	142,667
Lender's (Lender's Review) .....	132,066
HUD .....	10,601
—HUD Review .....	6,601
—Elimination of the 10-year warranty webpage .....	320
—Elimination of the review of Plan Renewals .....	1,920
—Elimination of the review of single state renewals .....	1,280
—Elimination of burden hours on Warranty Providers for Plan Submittal .....	480
Estimated Total Financial Savings:	
Revised Estimated Total Financial Savings .....	29,538,052

**II. Background**

*FHA Inspection Requirements and the Inspector Roster*

Compliance inspectors, both from the private sector as well as HUD staff, have always played a vital role in FHA's mission to provide affordable homeownership by providing a means of assessing the durability and structural soundness of a home (whether newly constructed or under repair or renovation), as well as protecting the health and safety of the occupants. This role was particularly crucial in the 1930s and the following decades due to the lack of generally accepted building codes and code enforcement. Beginning in the early 1900s, model codes were developed by three separate regional model code groups. In addition, by the first part of the 20th century, all major cities had developed and adopted their

own individual building codes with little uniformity or consistency among the various codes.

In 1990, the three major model code groups combined efforts and formed the ICC to develop uniform codes with no regional limitations. Since the promulgation of the initial ICC codes, most state and local governments that have adopted building codes to regulate and standardize the construction of residential and commercial buildings have chosen the model codes developed by the ICC. While there is no official national building code, since the publication of the most recent version of the ICC residential building code in 2009, the IRC is in use or adopted in 49 states, the District of Columbia, and the U.S. Virgin Islands. (See <http://www.iccsafe.org/gr/Pages/adoption.aspx>.) The number of

adoptions continues to increase. In addition to adopting the ICC codes, jurisdictions have developed protocols and standards for inspections to ensure compliance with the adopted code.

Because of the historic lack of uniformity among building codes, FHA utilized various methods to standardize the inspection process for properties with FHA-insured mortgages. Before 1996, FHA's 81 field offices each maintained a panel of fee inspectors who were assigned on a rotating basis to perform inspections. From 1996 to 2004, mortgagees selected inspectors from a panel of inspectors listed on the Internet. This "Internet panel" was a compilation of inspectors from the local panels established by FHA's field offices. In 2002, FHA issued a proposed rule to establish the Roster to take the place of the Internet panel of inspectors.

The final rule, published on March 10, 2004 (69 FR 11494) and codified at 24 CFR 200.170–172, implementing the Roster that is in place today provides eligibility standards, procedures, and requirements for placement on the Roster. In addition to demonstrating professional experience and familiarity with HUD requirements, an applicant for the Roster is required to provide verification of passing HUD's comprehensive examination for Roster inspectors and possession of an inspector's license or certification if the state or local jurisdiction where the inspector operates requires such licensing or certification. The regulations also provide procedures for removing an inspector from the Roster for cause, generally for actions detrimental to HUD or its programs.

The regulations also set forth the circumstances under which FHA-approved mortgagees are required to use a Roster inspector. For new construction, a Roster inspector is needed only where the local jurisdiction in which the property is located does not perform inspections and does not issue building permits prior to construction and certificates of occupancy or equivalent documents upon satisfactory completion of construction. See 24 CFR 200.170(b)(1). For repairs or renovations to existing construction, a Roster inspector is needed only where structural repairs have been made requiring an inspection and this inspection is not performed by one of the licensed professionals as specified by regulation. See 24 CFR 200.170(b)(2). The licensed professional may be a licensed, bonded, and registered engineer; a licensed home inspector; or other person specifically registered or licensed to conduct such inspections, such as a building inspector in a jurisdiction that has adopted a building code and that requires the issuance of building permits and subsequent inspections for repairs and renovations of existing construction, structural or otherwise.

#### *Insured 10-Year Protection Plan for High LTV Mortgages*

Section 310 of the Housing and Community Development Amendments of 1979 (Pub. L. 96–153, approved December 21, 1979) (1979 Amendments), amended section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) to permit FHA to insure a mortgage with a high LTV ratio (in excess of 90 percent of the appraised property value) for single-family homes less than one year old if the dwelling was approved for mortgage insurance prior to construction or if “the dwelling

is covered by a consumer protection plan or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance prior to the beginning of construction.”

Following issuance of a notice of solicitation of public comments (49 FR 45075, November 14, 1984) and a proposed rule (52 FR 21961, June 10, 1987), HUD published a final rule on October 5, 1990 (55 FR 41016), that set forth the requirements for a consumer protection plan “acceptable to the Secretary,” in accordance with the 1979 Amendments. This final rule is codified at 24 CFR 203.18(a)(3) and 203.200–209. Section 203.18(a)(3) requires high LTV mortgages to be accompanied by a 10-year consumer protection plan in order to be eligible for FHA mortgage insurance. Sections 203.200 through 203.209 set forth the criteria that such plans must meet in order to be acceptable to HUD, including certain underwriting standards and baseline warranty coverage that insures against structural defects. HUD currently maintains a database with 17 approved 10-year warranty plan providers, which is available on the HUD Web site.<sup>2</sup> Plan issuers apply to have their warranty plans accepted by HUD by submitting the plans to HUD for review. HUD then examines the submitted plans for compliance with the regulations. In order to maintain acceptance by HUD, the plans must be resubmitted for review every 2 years or the acceptance will be automatically terminated.

The HERA (Pub. L. 110–289, approved July 30, 2008) eliminated the language in section 203(b)(2) that imposed special requirements on high LTV mortgages, including the requirement for a consumer protection plan or warranty plan deemed acceptable by HUD. Removal of such language does not prohibit HUD from retaining these requirements, but HUD is no longer statutorily mandated to maintain these requirements for high LTV mortgages.

### **III. This Proposed Rule**

#### *Removal of FHA Inspection Requirements and the Inspector Roster*

Along with the increasing prevalence of uniform residential building codes promulgated by ICC, there is an increasing number of RCIs who are certified by the ICC. RCIs certified by the ICC must pass a set of rigorous examinations and must be familiar with

the IRC; the most widely adopted residential code in the country. Because of this and the fact that FHA accepts a local jurisdiction's building permits and certificates of occupancy in lieu of an inspection by a Roster inspector, FHA has determined that it is no longer necessary to maintain an Inspector Roster. For new and proposed construction, as well as for repairs and renovations of existing properties, in areas where local jurisdictions provide building code enforcement and the requisite documentation (issuance of building permits and certificates of occupancy or satisfactory inspection notices for work completed, or their equivalents), FHA will continue to accept such documentation as satisfactory evidence of the completion of work. For the diminishing number of jurisdictions that do not provide building code enforcement and requisite documentation, FHA proposes to accept inspections by an RCI certified by the ICC and who is also licensed or 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.

The ICC is a membership association dedicated to building safety and fire prevention and develops the great majority of building codes and standards used to construct residential and commercial buildings in the United States. An RCI is certified by the ICC after successful passage of the following standardized examinations, developed and administered by the ICC: Residential Building Inspector, Residential Electrical Inspector, Residential Mechanical Inspector, and Residential Plumbing Inspector. An ICC certification is valid for 3 years and renewal is achieved by participating in continuing education and professional development activities.

This rule proposes to amend 24 CFR 200.145, entitled “Property and mortgage assessment,” to include the fact that property inspections are still required despite the removal of the Roster regulations. The removal of the Roster regulations does not mean an absence of any inspection requirement for a property to be eligible for an FHA-insured mortgage. This rule will continue to permit inspections performed by local jurisdictions as satisfactory evidence of work completed, as discussed above. Where such inspections are not performed by the local jurisdiction (e.g., where jurisdictions do not provide for building code enforcement or do not provide documentation such as building permits and certificates of occupancy), this rule

<sup>2</sup> The list of approved 10-year protection plans may be downloaded from <http://www.hud.gov/offices/hsg/sfh/ins/hoctenyr.pdf>.

would require that the inspections be performed by an RCI who is also licensed or certified as a home inspector in jurisdictions that license or certify such inspectors. The number of required inspections would be unchanged from current regulatory requirements—three inspections in the case of new construction (see § 200.170(b)(1)) and a single inspection for existing construction (see § 200.170(b)(2)).

In those rare instances involving property located in areas where there is an absence of such RCIs, the lender shall obtain an inspection performed by a third party who is a registered architect, a professional engineer, or a tradesman or contractor and has met the licensing and bonding requirements of the State in which the property is located. Registered architects and professional engineers generally must have a minimum of 10 years of documented residential construction experience as related to new construction or repairs of a structural nature, ranging from building techniques to the installation of mechanical, electrical, and plumbing systems.<sup>3</sup> In cases where inspections are performed by RCIs or other qualified third parties in areas where there is an absence of RCIs, the inspection must ensure that construction was in accordance with any applicable building codes in jurisdictions that have building codes in place but either do not provide for building code enforcement or do not provide documentation such as building permits and certificates of occupancy.

*Specific requests for comment.* HUD has been unable to determine the number of jurisdictions for which there may be an absence of RCIs, and specifically requests information that would help HUD determine the number of jurisdictions or geographical areas in which RCIs are not available to perform inspections. Additionally, HUD is considering and seeks comment on whether, for jurisdictions for which RCIs are not available, whether 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, tradesman, or contractor with a minimum of 5 years experience.

<sup>3</sup> Each State establishes the licensing requirements for professional engineers and architects, which generally include education requirements and require passing certain examinations. As provided, in the following Web site, for example, becoming a licensed professional engineer generally requires at least 12 years of education and experience. See <http://www.heimer.com/pe/index.html>.

By continuing to accept inspections performed by local jurisdictions rather than requiring an inspection by an FHA Roster inspector, FHA is recognizing that the local jurisdiction is in a better position to determine how best to conduct inspections to ensure compliance with local building codes. By continuing its practice of deferring to the local jurisdiction, FHA would also be mirroring the broader residential mortgage lending industry, which has no national roster of inspectors and relies upon local jurisdictions to ensure that new construction or renovation or repairs to existing construction is both durable and safe. By accepting inspections performed by RCIs, HUD is conforming its standards to rigorous and well-established nationwide criteria for home inspections.

The number of properties insured by FHA that would require an inspection by an RCI (or other qualified individual where an RCI is unavailable) is statistically insignificant. Of the 1,946,639 loans endorsed by FHA in Fiscal Year (FY) 2009, only 2,975 (0.15 percent) of these loans required the use of a Roster inspector. Of the 1,746,367 loans endorsed by FHA in FY 2010, only 2,155 (0.1 percent) of these loans required the use of a Roster inspector. For FY 2011, only 685 out of 1,182,512 (0.06 percent) endorsed loans required the use of a Roster inspector. This statistical trend, along with the high standards required to become an RCI (or the professional qualifications and length of experience that would be required for other qualified individuals in the absence of an RCI), indicate that the elimination of the Inspector Roster will have an insignificant impact on the risk to FHA's Insurance Fund. In other words, because so few homes even require an inspection by a Roster inspector anymore, and RCIs have such high qualifications, it is highly unlikely that eliminating the Inspector Roster poses any increased risk of foreclosure because of inadequate inspections.

#### *Removal of Requirement for Insured 10-Year Protection Plan for High-LTV Mortgages*

The new inspection requirements proposed by this rule will apply to all single-family dwellings insured by FHA, for both new and existing construction, including high LTV FHA-insured mortgages. In this regard, HUD proposes to remove the regulations governing 10-year protection plans for high LTV mortgages, found at 24 CFR 203.18(a)(3) and 200–209. As discussed above in the Background section of this preamble, HERA eliminated any special requirements for high LTV mortgages,

therefore HUD proposes to amend its regulations to follow suit. In proposing to remove in regulation the requirement for a 10-year protection plan, it is HUD's position that in the more than 20 years since the promulgation of the 10-year protection plan regulations, the necessity of requiring consumer protection plans appears to have lessened. The quality of housing and building technology has improved significantly, as has the proliferation of more uniform building codes and building code enforcement.

Requiring protection plans increases, in most cases, the cost of buying a home, as well as the regulatory burden on lenders and homebuyers. Builders will frequently factor in the cost of a 10-year protection plan and this increase in cost adds to the cost of the home.

In addition, although HUD is no longer mandated by statute to require a consumer protection plan or warranty plan, HUD is retaining the requirement that the Warranty of Completion of Construction (form HUD-92544) be executed by the builder and the buyer of a newly constructed home, as a condition for FHA mortgage insurance. This warranty provides assurance to FHA that the home was built according to plan, and protects the buyer against defects in equipment, material, or workmanship supplied or performed by the builder, subcontractor, or supplier. The warrantor agrees to fix and pay for the defect and restore any component of the home damaged in fulfilling the terms and conditions of the warranty. The one-year warranty commences on the date that title is conveyed to the buyer, the date that construction is complete, or upon occupancy, whichever date occurs first.

The regulations regarding 10-year protection plans were promulgated more than 20 years ago, and because of the increase in the quality of construction and the stringent requirements for building inspections proposed by this rule, HUD has determined that 10-year protection plans are no longer necessary to safeguard FHA's Insurance Fund. Reliance on inspections performed by local jurisdictions, RCIs, or other qualified individuals, as proposed by this rule, adequately protects the Insurance Fund and streamlines FHA's processing requirements. In fact, in HUD's final 1990 rule that followed the 1987 proposed rule and established the 10-year protection plan regulations, HUD, at the final rule stage, eliminated proposed criteria for acceptability of a plan on the basis that the criteria removed were satisfactorily addressed by state insurers and HUD did not need

to impose these requirements, adding to the burden of entities seeking HUD's approval of warranty plans.<sup>4</sup> Therefore, from the outset of establishing the warranty plan regulations, it was never HUD's intention to duplicate requirements that were satisfactorily being addressed at the State or local level. HUD, however, is retaining the requirement that the Warranty of Completion of Construction (form HUD-92544) be executed by the builder and the buyer of the home, as a condition for FHA mortgage insurance. The warranty of completion, as the title indicates, addresses homes for which construction has not been completed. Before committing to insure a loan on a home that has not yet been completed, FHA requires a signed warranty of completion. The 10-year warranty plan, as has been discussed in this preamble, is designed to protect against construction defects. Again, however, it is HUD's position that the quality of construction and more stringent building code requirements and inspections makes the 10-year warranty plan no longer necessary.

Further, removal of these regulations is consistent with the President's Executive Order 13563, entitled "Improving Regulation and Regulatory Review," signed by the President on January 18, 2011, and published on January 21, 2011, at 76 FR 3821. This Executive Order requires 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." For the reasons discussed in this preamble, HUD has determined that the requirement of a 10-year protection plan for high LTV mortgages is outmoded and may be unnecessarily

<sup>4</sup> In the preamble to the October 5, 1990, final rule, HUD stated as follows: "The Department has reconsidered its position [on certain plan acceptability criteria] in light of these and similar comments and has determined to continue the existing system of accepting Plans that have State approval. This means that Plans will not, as a separate matter, have to satisfy the independent criteria formerly proposed in the sections referenced above. State approval serves the purpose of those now abandoned sections—ensuring that Plans have adequate financial and insurance backing. Removal of these sections also has the incidental benefit of eliminating a potential administrative burden on both HUD and Plan issuers. This action means that Plan issuers will not have to furnish the information that would have been required under these now-removed sections and, consequently, HUD will not have to evaluate each submission to ensure compliance with the regulatory criteria. HUD, along with homeowners, is still assured of the financial soundness of a Plan, since Plans backed by insurance companies must demonstrate their acceptance in each State in which they are doing business." (See 55 FR at 41017)

costly to homebuyers and, therefore, proposes to remove the regulations.

#### *Conforming Change*

This rule would also amend § 203.50 to reflect the statutory change made by HERA and the removal of §§ 203.18(a)(3) and 200-209 of the regulations. Section 203.50(f) ("Eligibility of rehabilitation loans") cross-references § 203.18(a)(3), and because § 203.18(a)(3) is being removed, this rule will amend § 203.50(f) accordingly.

#### **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).

As already discussed in this preamble, this rule would remove conditions on closing an FHA-insured mortgage that HUD believes are no longer necessary and that add to the closing process unnecessary costs for the buyer. As discussed, HUD's proposal to remove the Inspector Roster is based on the recognition of the sufficiency and quality of inspections carried out by certified inspectors and other qualified individuals. In proposing to remove the requirement for a 10-year protection plan, HUD submits that in the more than 20 years since the promulgation of the 10-year protection plan regulations, the necessity of requiring consumer protection plans has lessened. The quality of housing and building technology has improved significantly, as has the proliferation of

more uniform building codes and building code enforcement.

HUD expects both the elimination of the national Inspector Roster and the elimination of the 10-year warranty plan to have economic benefits and costs. However, neither the economic costs nor the benefits of the elimination of the two requirements are greater than the \$100 million threshold that determines economic significance under Executive Orders 12866 and 13563. By eliminating the national Inspector Roster, HUD anticipates benefits of approximately \$27,770 in savings. By eliminating the 10-year warranty requirement, HUD anticipates benefits in the form of approximately \$29.5 million in savings.

##### *Benefits and Costs of Eliminating the Inspector Roster*

By eliminating the Roster, HUD believes that this rule would expand the number of inspectors from which lenders may choose for the inspection of a home where the mortgage is to be insured by FHA. The Roster has a total of 3,029 inspectors (in FY 2011, HUD added 90 inspectors and 29 have been added in FY 2012). HUD is also in the process of removing ineligible inspectors from the Roster and anticipates a significant reduction in inspectors upon completion of this "sweep." The ICC is an international organization, with 49 states, the District of Columbia, and the U.S. Virgin Islands having adopted the IRC published by ICC. By adopting the IRC, the jurisdictions have all agreed that, to perform the inspection of such codes, the inspectors must be certified by the ICC as RCIs. It is not known how many inspectors currently listed on the Roster have ICC designation, or how many Roster inspectors without ICC designation would earn the designation in order to perform FHA work. Although those Roster inspectors who already have ICC designation would lose the marketing benefits associated with being listed on the Roster, they would continue to be eligible to perform FHA inspections. HUD believes that the overall effect of removing Roster inspectors will be to increase the number of competent inspectors, since inspectors currently on the Roster would no longer have an advantage of the exclusive market power of inspecting FHA-insured homes, conveyed by the current Roster requirements. A possible benefit of the increased choice of inspectors for the lender is that the cost, which is currently averaged to be approximately \$1,000, may be driven down by the increased competition, and those

savings may be passed on to the homeowners.

In addition, HUD anticipates savings of approximately \$42,770 in administrative costs from ceasing to maintain the Roster. To successfully administer the program, HUD must, among other administrative duties, bear the costs and workload associated with: (1) The review and verification of applicant qualifications for placement on the Roster; (2) the maintenance of records pertaining to application, placement, and removal from the Roster; (3) the monitoring of inspector performance; and (4) administrative proceedings to remove poor performing inspectors from the Roster. These costs will no longer accrue once this rule becomes effective.

As a matter of costs, the elimination of the Roster would affect a very limited number of loans. FHA data shows that the number of FHA-insured properties that would require an inspection by an RCI or other qualified individual where an RCI is unavailable is statistically insignificant. These are the properties that would normally go to inspectors from the Roster. Of the 1,946,639 loans endorsed by FHA in FY 2009, only 2,975 (0.15 percent) of these loans required the use of a Roster inspector. Of the 1,746,367 loans endorsed by FHA in FY 2010, only 2,155 (0.1 percent) of these loans required the use of a Roster inspector. For FY 2011, only 685 out of 1,182,512 (0.06 percent) endorsed loans required the use of a Roster inspector.

Moreover, the increased risk of inadequate inspections because of the elimination of the Roster is *de minimis*, if any. To become an RCI, applicants must undergo a rigorous examination and certification process that is more robust than the Inspector Roster qualification process. In the limited circumstances where an RCI is unavailable in a particular jurisdiction, the professional qualifications and length of experience that would be required for other qualified individuals are sufficiently high thresholds to mitigate the concern of inadequate inspections.

Given that the costs of eliminating the Inspector Roster are minimal because so few loans would be affected and that the concern of inadequate inspections is mitigated by the now available alternatives to Roster inspectors, as compared to the benefits of increased consumer choice, administrative savings, and burden reduction, HUD believes the benefits of this rule outweigh the minimal costs.

#### *Benefits and Costs of Eliminating the 10-Year Warranty Requirement*

By eliminating the 10-year warranty requirement, homeowners will no longer be required to pay warranty premiums. There currently are 16 FHA-approved warranty issuers. In 2010 and 2011, an average of 57,415 warranties were issued, with an average warranty rate ranging from \$2.75 to \$3.75 per \$1,000 of coverage.<sup>5</sup> Assuming an average coverage of \$170,412 (2010 average) and an average of \$3.00 per \$1,000 of coverage,<sup>6</sup> the total savings for homeowners because of the elimination of the warranty requirement is projected to approximate \$29.4 million.

In addition, where homeowners with FHA-insured mortgages choose to purchase a protection plan, the FHA-approved warranty issuers would have to compete with other warranty issuers for such business. The current regulations limit the choices available to homebuyers to those warranty plan providers approved by HUD as meeting the regulatory requirements. Homebuyers would reap the benefits of heightened market competition, as warranty providers vie for their business through competitive pricing and expanded warranty coverage.

As noted earlier in this preamble, requiring protection plans increases, in most cases, the cost of buying a home. Builders frequently will factor in the cost of a 10-year protection plan and this increase in cost adds to the cost of the home. The changes proposed by this rule would eliminate, for lenders and homeowners, the costs associated with this regulatory burden.

In addition, the elimination of the warranty requirement also eliminates the associated paperwork burden formerly associated with the requirement. Assuming again the 2010–2011 average figure of 57,415 warranties, with 0.10 burden hours for each application, the elimination of the warranty requirement saves the public an additional \$132,066 in burden hours. And finally, HUD has to review warranty plans submitted for approval and renewal to ensure compliance with the regulatory requirements of

<sup>5</sup> This information derives from HUD's survey of its current warranty providers. A search on the Internet for home warranty insurers and their rates revealed that rates range from \$1.50 to \$7.50 per thousand, annual premium, depending upon the value/amount of the property. See, for example, <http://www.firstweber.com/consumer-notices/>.

<sup>6</sup> Another source on home warranty pricing advises that the average cost is about \$3 per thousand of the selling price of the home. See [http://www.tcaor.com/Decoding\\_the\\_RE\\_Market/Home\\_Warranties.pdf](http://www.tcaor.com/Decoding_the_RE_Market/Home_Warranties.pdf). This rate is closer to that being charged by the home warranty providers currently participating in FHA's program.

§§ 203.200–203.209, while also maintaining the online list of qualified warranty providers. The cost to HUD of providing this administrative service is approximately \$10,601. In sum, the elimination of the warranty requirement represents a total cost savings to the public of \$29,352,615 in warranty cost + \$132,066 in paperwork burden + \$10,601 in administrative costs to HUD. The cost of eliminating the warranty requirement is that consumers may be less protected from construction defects. However, as discussed earlier, the increased quality of construction materials, and the standardization of building codes and building code enforcement, protect consumers much better now than when the warranty requirement regulation was first promulgated. Assuming an average coverage of \$170,412 and computed total cost savings of \$29,522,572, 174 of the homes impacted by the elimination of this requirement would have to be foreclosed upon, due to the financial impact associated with construction problems, for the cost savings to be outweighed by the costs of the elimination of the warranty requirement. HUD believes that this is very unlikely. Thus, HUD believes that the benefit in cost savings exceeds the potential cost of eliminating the 10-year warranty requirement.

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*

As noted, although HUD proposes to remove the regulations requiring 10-year protection plans for high LTV FHA-insured mortgages, it is retaining the requirement that the Warranty of Completion of Construction (form HUD–92544) be executed by the builder and the buyer of the home, as a condition for FHA mortgage insurance. The information collections contained in form HUD–92544 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) and assigned OMB control number 2502–0598. The annual reporting burden of this information

collection is estimated at 478,758 hours and no burden dollars, and this proposed rulemaking would not change the estimated burden hours for continued use of form HUD-92544.

The information collection requirements contained in proposed § 200.145(c), which would codify existing requirements pertaining to compliance inspection reports (form HUD-92051) and the mortgagee's assurance of completion (form HUD-

92300), have been approved by OMB under the PRA and assigned OMB Control Number 2502-0189. The annual reporting burden of this information collection is estimated at 1,984 hours and no burden dollars, and this proposed rulemaking would not change the estimated burden hours for continued use of these forms. HUD would still expect the same number of inspections, just provided by a different set of respondents (i.e., RCIs and

qualified individuals, as opposed to Roster inspectors).

The chart below represents the savings in paperwork burdens proposed in this rule. By eliminating the Inspector Roster, inspectors will no longer submit applications for HUD's review and approval. By eliminating the warranty requirement, warranty providers will no longer need to submit applications for HUD's review and approval.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost	Annual cost
Inspector Applications/ HUD-92563I (and copy of state certification) .....	1,000	1	1,000	.50	500	\$30	\$15,000
Warranty providers § 203.202 .....	16	*1	8	2.00	16	30	480

\* Every 2 years.

In accordance with the PRA, 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. As noted above in this preamble, this proposed rule is a deregulatory action taken by HUD that will alleviate the economic costs borne by participants in the FHA single family mortgage insurance programs. As an initial matter, HUD notes that the RFA, under its own terms, applies to entities and not to individuals. The procedures and requirements for placement on the Roster apply to individual inspectors, not to entities. Accordingly, the RFA does not apply to the Roster component of this proposed rule. In addition to removing the Roster regulations, HUD also proposes to remove the regulations regarding the 10-year protection plans required in order to qualify for high LTV FHA-insured mortgages as a condition of closing for newly constructed single-family homes. As discussed in this preamble, removal of the requirement for a 10-year protection plan would ease burdens on lenders and homebuilders and does not preclude borrowers from purchasing such plans. HUD is removing these regulations because it

has deemed they are no longer necessary. The proposed regulatory changes recognize the sufficiency and quality of inspections carried out by local jurisdictions as a result of the building permit and certification of occupancy processes. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's view that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule.

*Environmental Impact*

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. In addition, part of this rule changes a statutorily required and/or discretionary establishment and review of loan limits. Accordingly, under 24 CFR 50.19(c)(1) and (c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*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 and 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**

*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.

## 24 CFR Part 203

Hawaiian natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in the preamble, HUD proposes to amend 24 CFR parts 200 and 203 to read 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. 1702–1715–z–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 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) 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, the lender shall obtain an inspection performed by a third party, who is a registered architect, a professional engineer, or a tradesman 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.

■ 3. Remove the undesignated center heading “FHA Inspector Roster” and §§ 200.170–172.

**PART 203—SINGLE FAMILY MORTGAGE INSURANCE**

■ 4. The authority citation for part 203 continues to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, 1715z–16, and 1715u; 42 U.S.C. 3535(d).

**§ 203.18 [Amended]**

■ 5. In § 203.18, remove paragraph (a)(3) and redesignate paragraph (a)(4) as paragraph (a)(3).

■ 6. In § 203.50, revise paragraph (f)(1) to read as follows:

**§ 203.50 Eligibility of rehabilitation loans.**

\* \* \* \* \*

(f) \* \* \*

(1)(i) The limits prescribed in § 203.18(a)(1) (in the case of a dwelling to be occupied as a principal residence, as defined in § 203.18(f)(1));

(ii) The limits prescribed in § 203.18(a)(1) and (3) (in the case of a dwelling to be occupied as a secondary residence, as defined in § 203.18(f)(2));

(iii) 85 percent of the limits prescribed in § 203.18(c), or such higher limit, not to exceed the limits set forth in § 203.18(a)(1), as Commissioner may prescribe (in the case of an eligible nonoccupant mortgagor as defined in § 203.18(f)(3));

(iv) The limits prescribed in § 203.18a, based upon the sum of the estimated cost of rehabilitation and the Commissioner’s estimate of the value of the property before rehabilitation; or

\* \* \* \* \*

**§§ 203.200 through 203.209 [Removed]**

■ 7. Remove the undesignated center heading “Insured Ten-Year Protection Plans (Plan)” and §§ 203.200 through 203.209.

Dated: January 8, 2013.

**Carol J. Galante**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

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**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 54**

[REG–120391]

RIN 1545–BJ60

**DEPARTMENT OF LABOR****Employee Benefits Security Administration****29 CFR Part 2590**

RIN 1210–AB44

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****45 CFR Parts 147, 148, and 156**

[CMS–9968–P]

RIN 0938–AR42

**Coverage of Certain Preventive Services Under the Affordable Care Act**

**AGENCY:** Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

**ACTION:** Proposed rules.

**SUMMARY:** This document proposes amendments to rules regarding coverage for certain preventive services under section 2713 of the Public Health Service Act, as added by the Patient Protection and Affordable Care Act, as amended, and incorporated into the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code. Section 2713 of the Public Health Service Act requires coverage without cost sharing of certain preventive health services, including certain contraceptive services, in non-exempt, non-grandfathered group health plans and health insurance coverage. The proposed rules would amend the authorization to exempt group health plans established or maintained by certain religious employers (and group health insurance coverage provided in connection with such plans) with respect to the requirement to cover