

Change is inevitable. Being ready for it isn't.



## New Administration, New Updates

Happy Holidays! Pass around the egg nog, because it's official, and most of us didn't believe he could do it. I was one of the non-believers \*(see footnote below)\* Donald Trump, the world-famous real estate developer and TV persona, is now President and the leader of the free world. My youngest child wants to know what does his presidency mean for the entire universe; while I am just trying to determine what it means for HUD and housing in general! Answers to some of our questions can only be provided by our proposed 17th HUD Secretary, renowned neurosurgeon, Dr. Ben Carson. Many have questioned his appointment, saying he doesn't have strong housing qualifications, but who knows - more surprises may lie ahead! As for me, all I can do is make sure our future deputy and assistant secretaries are well-informed and understand both the genesis and necessary continuity of recent interpretations and changes.

We can expect more changes ahead including some planned within the waning days of the current administration, as well as, potentially unexpected changes by the future administration. Did someone say CHANGE? Because here we go .... recent HUD changes in the final days of the current administration include today's release of the [CPD - Balcony Memo](#); last week's release of requirements for [Radon Testing in Healthcare](#); continued discussions on the [FEMA Floodplain](#) hazard mitigation issue; additional [Green MIP](#) interpretation; recent release of the [Proposed Benchmarking Rule](#) and some new [RAD Guidance](#). Oh and did I forget to mention that HUD was intending to release the [CNA e-Tool Platform](#) by the end of the year, which means today or tomorrow. I won't hold my breath for that nugget! Enjoy discussion of these new topics, and as always feel free to reach out to me and our HUD-FHA subject matter experts if you have additional questions about recent changes. Because one thing will remain the same - D3G will both steadfastly embrace change, as well as challenge change when necessary. Cheers and Happy Holidays!!!

\*(footnote)\*

*OK, I was wrong. The new crystal ball I used in the last newsletter was obviously foggy. Hillary won the popular vote, but not the presidency; mortgage rates have steadily increased since election night; and the CNA e-Tool may be released before year's end. But two of the highlights I mentioned in my FY2017 forecast are even more likely to be embraced by the Trump-Carson show, including HUD's Rental Assistance Demonstration (RAD) and Small Loan Risk-Share Programs.*

Lots of cool stuff has been happening at D3G as we prepare for the new year. D3G has been working on making our third-party services more integrated, streamlined, and cohesive to meet the challenges of the New MAP Guide, the Green MIP Notice, and the imminent CNA e-Tool. I am thankful for a very strong management team at D3G. Companies which are fortunate enough to experience the challenges of growth know all too well that expansion is difficult. But what makes it easier is the Team that can be created within an organization. And for that I am grateful to announce new appointments to our Senior Leadership Team. To read more, here is the [press-release on the leadership appointments](#).

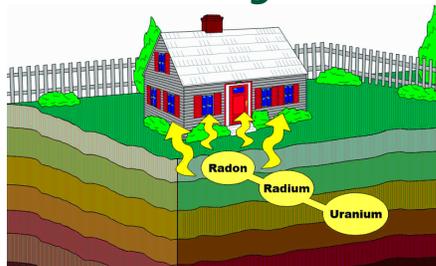


## CPD Balcony Noise Memo!!!

I got my holiday present from HUD when Memo [CPD-16-19 - Balcony Policy](#) was issued this week! Over the past year D3G and industry leaders have been pressuring HUD to reconsider noise policy with regards to private balconies. I wish to thank the working groups with the Multifamily Lenders Council and the Mortgage Bankers Association for assisting with the considerable effort to get this changed. We repetitively made the case that balconies are private spaces desired by renters, even in areas of elevated noise like cities and transit oriented development. HUD's previous noise regulation interpretation was hindering construction of balconies, and encouraging Juliet balconies (which are not really functional and adversely affect energy consumption in housing). But, now developers can design balconies in elevated noise areas, as HUD has opined that: "Balconies are amenities. Balconies are not required for the full functioning of dwelling units that have reliable, alternative spaces within the structure; therefore, they are ancillary to the principal land use-housing. Because their use is optional, the negative effects of noise exposure are not an important determinant of overall project viability." Great news for our industry, developers and the renters they serve!



## Radon Testing in Healthcare Facilities



The updated Lean handbook (4232.1 REV-1) was published on December 6, 2016 and [Section 7.8 contains requirements for radon sampling](#). These provisions will apply to all projects in the Section 232 portfolio, and to all lender/underwriter approval requests received on or after January 5, 2017. The radon requirements were modeled after the requirements for testing in multi-family properties in the

HUD MAP guide with some modifications to reflect the differences in these types of facilities. The ANSI/AARST Protocol for Conducting Measurements of Radon and Radon Decay Products in Schools and Large Buildings (AARST MALF-2014) is the referenced standard for conducting radon assessments in Section 232 projects. The testing requirements differ from the multi-family testing requirements (AARST MAMF-2012) in several areas, including the minimum length of time for the tests (72 hours versus 48 hours) and the development of the testing

plan (includes all residential rooms as well as administrative, therapy, community, etc. areas). There is an allowance to do an initial screening of just 25% of the occupied and occupy-able rooms in a facility so long as the state allows this approach (currently all states except Ohio, Illinois, Kentucky, Iowa and Maine). However, if any elevated radon levels are confirmed, testing in the remainder of the facility will be required. In addition, there is no testing exemption for sites in an EPA Radon Zone 3 as there is currently for multi-family projects. Similar to the MAP guide, there is a requirement for radon resistant construction, including documentation of adherence to the referenced ASTM standards (i.e. Pre-Construction Radon Review), as well as an Operations, Maintenance and Management (OM+M) plan for any project with an active mitigation system. And as D3G gets more information on this new requirement, we will be sure to disseminate the knowledge to the industry.

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## **FEMA and the proposed Federal Flood Risk Management Standards**



On October 28, 2016, HUD published a Proposed Rule (Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management

Standard) that will amend portions of HUD's Floodplain Management Regulations. Most notably the proposed rule indicates HUD will utilize the freeboard value approach for establishing the flood elevation and hazard area (Federal Flood Risk Management Standard-FFRMS). HUD's floodplain regulations will apply to proposed actions within the FFRMS floodplain, unless otherwise excepted. The FFRMS floodplain is proposed to be defined as an area in which an action is proposed that: for non-critical actions, the site is less than two-feet above the floodplain and for critical actions, the site is either within the 500-year floodplain or less than three feet above the 100-year floodplain.

According to the Federal Flood Risk Management Standard (FFRMS) Frequently Asked Questions (FAQs) and as stated above, some proposed actions will be within the FFRMS floodplain that are not currently identified within the special flood hazard area. HUD projects subject to HUD's floodplain management regulations will no longer be able to rely entirely on existing flood maps to determine whether a site is within the horizontally expanded FFRMS floodplain. Per the FAQ, HUD has not defined a specific method to determine the FFRMS floodplain; however, examples of how this can be determined is provided within the FAQ (see link below). Additionally, the proposed rule would require the following for new construction and substantial improvements that are subject to 24 C.F.R. Part 55 (HUD's Floodplain Management and Wetland Protection Regulations):

- For residential non-critical actions, the lowest floor must be elevated two (2) feet above the base flood elevation
- For non-residential non-critical actions, the lowest floor of the structure must either be elevated two (2) feet above the base flood elevation or be designed and constructed such that the structure is flood proofed to at least 2 feet above the base flood elevation
- For critical actions - the lowest floor must be elevated above the greater of the 500-year floodplain or 3 feet above the base flood elevation

The full text of the rule is on the Federal Register at:

<https://www.federalregister.gov/documents/2016/10/28/2016-25521/floodplain-management-and-protection-of-wetlands-minimum-property-standards-for-flood-hazard>

HUD has issued a press release at:

[http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2016/HUDNo\\_16-165](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2016/HUDNo_16-165)

HUD has a new page on the HUD Exchange with an overview of the rule and some FAQs at:

<https://www.hudexchange.info/programs/environmental-review/FFRMS/>

The direct link to FAQ's, which provide some clarification:

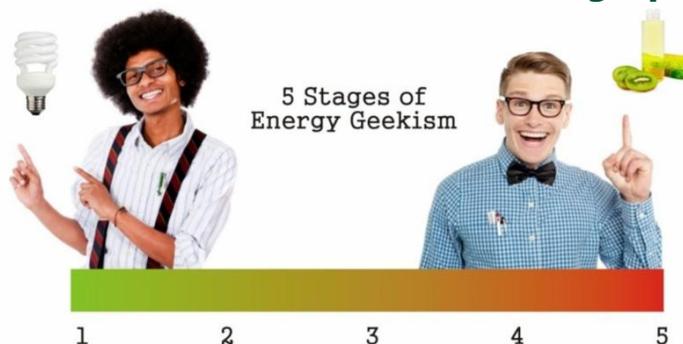
<https://www.hudexchange.info/resources/documents/FFRMS-FAQs.pdf>

HUD is soliciting public comment until December 27, 2016:

<https://www.regulations.gov/docket?D=HUD-2016-0124>

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## Green MIP and Benchmark Ruling Update



D3G will continue to keep the markets abreast of the newest requirements and interpretations within the Green MIP rate reduction process. While the industry awaits a forthcoming (shall we say "eminent"?) housing notice on the procedures behind the policy, we are pleased to

provide you with some information on the ever-morphing Green MIP rate reduction program. Recently, HUD has implemented a requirement for a Utility Sampling Plan and in last month's newsletter we provided a white paper titled "Meeting Program Reporting Data Requirement" on the topic. This month we dive a little deeper and provide a white paper on the importance of accurate energy consumption modeling. Steve Evenko and Tim Bryant, two of our resident green wonks, played with energy modeling software to find examples of sensitivities that could create risks in the Green MIP Reduction process. Remember, you should never tell or ask an energy modeler to provide a score of 75; rather you should ask them to assist the developer in achieving a score greater than 75. Read on in this titillating white paper titled, [MIP Reduction: Don't Create Risk by Using Cheap or Aggressive Energy Models](#)". Also, of interest to the housing energy industry is the October 04, 2016 Federal Register notice on [Energy Benchmarking \(FR-5913-N-27\)](#). This draft notice would require energy benchmarking for all multifamily properties in HUD's portfolio, including public, assisted and mortgage insurance housing. D3G staff were integral in generating commentary submitted by the MBA and NR&HA, in hopes of obtaining reprieve or flexibility to the proposed requirements, at least until a time when utility transparency is ubiquitous in the markets.

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## eCNA Tool Is Almost Here

Over the past 24+ months we have all heard about the infamous, yet elusive, CNA e-Tool. Sometimes it sounds too good to be true, like a Unicorn. Other times it sounds threatening like Sasquatch or Lord Voldemort. Is it real? Is it

mythical? Does it have special powers? Is it true that only a shaman can evoke the Tool's release above 15,000 feet in elevation? (see picture inset, Inca Shaman ritual at 15,000 ft. in Peru, with Rob calling to the Tool).



Industry partners visited HUD HQ in early November to provide User Acceptance Testing (UAT) of the CNA e-Tool platform, which was met with mixed reviews and bugs.

Shortly thereafter HUD informed the industry that the new and improved CNA e-Tool was to be delivered by year end, just in time to provide some additional holiday spirit (or a reason to imbibe in some holiday spirits!). However, as of today no tool nor any guidance on how long the industry will have before use of the CNA e-Tool is mandatory for MAP underwriting. So while the industry prepares to be a guinea pig (or "cuy" in Peruvian), I think it important for us to revisit the expectations of the CNA e-Tool. [Please enjoy this dusted-off white paper I authored back on February 27, 2015 on this topic.](#)

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## **Affordable Housing, HUD, and FHA Industry Scuttlebutt!**

**Jacksonville SMAC Meeting Discussions:** . . . During the first week of December, a fabulous meeting was held in the Jacksonville HUD office, complete with a fire drill exercise! SMAC, in participation with the Jacksonville and Atlanta HUD offices, staged an engaging session which demonstrated the knowledge and leadership in this industry. I found the constructive discussions about processing, underwriting and closing HUD FHA loans welcoming and demonstrated the ability of our industry to work together as true partners in affordable and workforce housing. Topics that garnered the most discussion included the environmental topics of floodplains, noise (balconies), off-site construction, and "choice-limiting" action. The "choice-limiting" provisions of MAP Guide should be reviewed by all Lenders, because first contact with HUD could limit your developer's plans, especially in deals involving land acquisition and subdivision after HUD involvement. On the engineering side of things, interactive discussions on the MIP reduction notice, utility sampling plans, and energy modeling were engaged by HUD staff, lenders and third parties alike.

**Labor Enforcement - Prevailing Wage:** . . . HUD's Office of Labor Standards and Enforcement (OLSE) has been busy meddling in the affairs of affordable and workforce housing, trying their hardest to make affordable housing NOT affordable. Many lenders have been surprised during HUD processing (including hours before closings) with split wage decisions for residential apartments of 4-stories or less. OLSE dug out a Labor Relation Letter from 12-02-1996 (LR 96-03) which defined "incidental" vs. "substantial", whereby line item construction costs exceeding 20% of the construction amount or in excess of \$1m may precipitate split wage decisions. While the industry has been made aware that split wage decisions should not happen; we still hear of lenders having issues with OLSE on this topic. The other recent event OLES opined upon is that demolition occurring prior to initial

endorsement is subject to prevailing wage if the work was performed in preparation for a loan program that requires prevailing wage. For this recent policy interpretation, they dug out Labor Relation letter LR 2009-01 dated August 12, 2009. Please .... I implore all lenders to bring OLSE grievances and hurdles that affect affordable housing production to the attention of industry advocates. Together our voice is stronger.

**Rental Assistance Demonstration (RAD):** . . . On November 16th a RAD Practitioners Day was held in Washington DC. The educational programming was excellent, sharing lessons learned as well as the potential path RAD may take under a new administration. Recent RAD guidance includes: (a) 2016-17 (HA), RAD Notice regarding Fair Housing and Civil Right Requirements and Relocation Requirements; and (b) 2016-20 (HA) regarding Disposition Instructions for the Public Housing Agency (PHA) Retention of Certain Public Housing Real Property. The first notice is an 80-page heavy read on compliance that PHAs and RAD development partners must obtain for FHA compliance and relocation. The second notice is a lighter read that covers instances in which a PHA desires to retain particular property rather than sell, transfer or ground lease; which could include disposition of administrative buildings, vacant land, and excess land.

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As always, we appreciate your business and we love hearing from you! Please keep us in mind for your next deal. We have competitive pricing and the experience to ensure your next project is a success!

Sincerely,

[Rob Hazelton](#), President  
Dominion Due Diligence Group (D3G)



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