Regulatory Impact Assessment

REPUBLIC OF KENYA

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

REGULATORY IMPACT STATEMENT

FOR

THE DRAFT AFFORDABLE HOUSING REGULATIONS ,2024.

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

This Regulatory Impact Statement (RIS) is a policy tool whose purpose is to examine and measure the likely benefits, costs and effects of the proposed Affordable Housing Regulations 2024 pursuant to Sections 6 & 7 of the Statutory Instruments Act (No. 23 of 2013). It examines the impact on the establishment of the Affordable Housing Levy Act whose main objective is to provide a framework for development and access to affordable housing and institutional housing; and for connected purposes.

This RIS is divided into 10 parts.Part 1 is the Introduction which outlines the context and the requirements for developing the proposed regulations. Part 2 of the RIS captures a statement of the objectives of the Regulations and the reasons for them. Part 3 of the RIS outlines the salient features of the Regulations. Part 4 provides the background and context of the affordable housing regulations.

Part 5 provides the policy and legal framework for affordable housing and outlines commitments from the Constitution of Kenya 2010, National Housing Policy and National Slum Upgrading and Prevention Policy of 2016 respectively, the Bottom Up Transformational Agenda(BETA), the Vision 2030, the Affordable Housing Act 2024, and the nexus and the need for the proposed Affordable Housing Regulations of 2024. Part 6 details the Stakeholders consultation process adopted to develop the RIS. It outlines the consultative process and other engagements with experts, public and private sector agencies and the general public. It also outlines the envisaged stakeholder engagement process. Part 7 of the RIS provides for the development of the proposed affordable housing regulations as the only available option as provided for under the Act.

Part 8 expounds on the likely effect of the proposed legislation. It provides for possible alternative and practicable means of achieving the foregoing objectives, including other regulatory as well as non-regulatory options. Part 9 expounds on the cost benefit analysis of the proposed regulations. It provides for assessment of the costs and benefits of the proposed affordable housing regulations, 2024 and of any other practicable means of achieving the same objectives. Lastly, Part 10 provides the proposed statutory regulations as well as where one can get a copy of the same. It provides that proposed regulations are available on the Ministry of Lands, Public Works, Housing and Urban Development, State Department for Housing & Urban Development website at www.housingandurban.go.ke and where the address where comments can be sent to Ardhi House on 6th Floor, Nairobi; or through email at ahp@housingandurban.go.ke. The comments are to be received by **Monday, April 29th, 2024 at 5.00 pm.**

1.0 INTRODUCTION

In recognition of Article 43(1)(b) of the Kenyan Constitution 2010 which empowers every citizen with a right to accessible and adequate housing, and reasonable standards of sanitation the Affordable Housing Act 2024 was enacted in furtherance of the above right. The provision of affordable housing has remained a huge challenge to the majority of citizens and especially the the low–income earners and this has resulted to proferation of slums and informal settlements. Over the years, the Government has therefore undertaken various policy interventions to address the deteriorating situation and arrest the challenges in the housing sector. Currently, the development of affordable housing has been prioritized as a key pillar under the Bottom Up Transformation Agenda (BETA). The Government through the SDHUD is implementing the affordable housing pillar under the affordable housing program (AHP). The program aims at providing 200,000 affordable housing units per annum to reduce the deficit. It also targets to grow the number of mortgages from 30,000 to 1,000,000 with favorable ownership terms that have monthly payments as low as KES 5,000.

The Sessional Paper No. 3 of 2016 on National Housing Policy and the National Slum Upgrading and Prevention Policy of 2016 provides for progressive realization of the right to accessible and adequate housing. These Policies are aimed at addressing the deteriorating housing conditions countrywide and to bridge the shortfall in housing stock arising from demand that far surpasses supply particularly for low-income housing in urban areas. The implementation of the policy interventions under the above policies provides positive trajectory of reducing the slums and informal settlements as well as building up on the housing stock for the benefit of the citizens.

The Affordable Housing Act 2024, is an Act of Parliament to give effect to Article 43(1) (b) of the Constitution; to provide a framework for development and access to affordable housing an institutional housing; and for connected purposes. The Act under section 4 provides for the imposition of the Affordable Housing Levy on gross salary of an employee and gross income of a person received or accrued which is not subject to a levy of an employee at the rate of 1.5 percent and with the employer deducting and remitting an equivalent amount from the one deducted from the employee. Section 59 of the Act further empowers the Cabinet Secretary responsible for affordable housing in consultation with the Board to make regulations for better carrying to effect the provisions of the Act. The proposed Affordable Housing Regulations therefore seek to facilitate full operationalization of the Affordable Housing Act in the development of affordable housing, institutional housing and associated social and physical infrastructure across the country.

The Statutory Instruments Act, 2013 (STI), is the primary legislation in Kenya, governing the development of subsidiary legislation. It provides for a comprehensive framework for the making, scrutiny, publication and operation of statutory instruments.

The Act requires regulation-making authorities to adopt high standards in the drafting of statutory instruments to promote their legal effectiveness, clarity and intelligibility to anticipated users; undertake appropriate consultation before making statutory instruments and establish improved mechanisms for parliamentary scrutiny of statutory instruments.

Additionally, Sections 6 and 7 of the Act require that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a Regulatory Impact Statement about the instrument.

This Regulatory Impact Statement (RIS) is therefore prepared to fulfil the requirement of section 6 of the SIA.

Regulation Making Authority

The Regulation making Authority is the Cabinet Secretary for Lands, Public Works, Housing and Urban Development in consultation with the Board pursuant to section 59 of the Affordable Housing Act,2024.

2.0 A STATEMENT OF THE OBJECTIVES OF THE PROPOSED REGULATION

The main objective and reason for the proposed Affordable Housing Regulations,2024 is to operationalize Affordable Housing Act, 2024 and provide clarity on its implementation. Specifically, the Regulations seek to:-

(a) Provide for eligibility, application, validity and revocation of exemptions from imposition of the Levy under section 6 of the Act
(b) provide the criteria for application for allocation and re-allocation in case of default of an affordable housing unit under section 48
(c) prescribe the requisite deposit for affordable housing unit under section 49(2)(a)
(d) Provide for inclusivity, and diversity within affordable housing schemes pursuant to Section 59(2) (i) of the Act
(e) Provide for the criteria for change of affordable housing unit under Section 59(2)(;
(f) Provide for loan interest rate or administration fee under section 51 of the Act
(g) Provide for procedure relating to off-take of affordable housing units;
(h) Provide for the eligibility criteria to enter into an agreement to develop institutional housing

(i) Provide for the application procedure for approval to develop institutional housing through implementing agencies
(j) Provide for eligibility to enter into agreement to finance off-take, application for approval
(k) Provide for application for approval to offer off take
(l) Provide clarity on development of associated physical and social infrastructure
(m) Provide for conduct of Public participation by the Board
(n) Provide for notice of affordable housing on settlement
(o) Provide for withdrawal of voluntary savings under Section 52;
(p) Provide for rural affordable housing unit
(q) Provide for restrictions on disposal of affordable housing unit.

3.0 SALIENT FEATURES OF THE REGULATIONS

The Salient features of the proposed Regulations includes the following:

1. Eligibility and application for Exemptions
2. Allocation of an affordable housing unit
3. Rate of deposit for the affordable housing units for various unit typologies
4. Change of affordable housing unit
5. Default in payment
6. Loan interest rate or administration fee
7. Agreement for development of institutional housing
8. Agreements with approved institutions and mortgage schemes
9. Eligibility and application for off-take
10. Associated social and physical infrastructure
11. Implementation of affordable housing on settlement
12. Withdrawal of Voluntary savings
13. Rural affordable housing development
14. Restriction & application on disposal of affordable housing unit

4.0 BACKGROUND AND CONTEXT

Housing is one of the basic human needs besides food and clothing. It is considered as one of the most basic human rights and an essential component of the right to an adequate standard of living. Further, adequate and affordable housing is not only necessary for security and comfort, but also critical in fostering social cohesion and development of a nation. Beyond its socio-cultural elements, housing is also a critical driver of economic development as a result of its forward and backward linkages with other economic development processes.

The supply of adequate and affordable housing to Kenyans, especially the low-income urban housing, and quality rural housing, has been a challenge for a long time despite the constitutional requirement under article 43 (1) (b). This is more pronounced in urban areas, with the low and lower middle income urban households being the worst affected. This has led to growth and spread of slums and informal settlements. There are more than 1,000 informal settlements in the country with 61% of Kenyans living in such settlements in urban areas. These settlements are associated with inadequate housing in terms of its durability, tenure security, health and access to associated physical and social infrastructure.

Housing access is central to the realization and enjoyment of human dignity and other group of rights, as it addresses deep seated psychological requirements for privacy, enhanced security and protection from adverse conditions of weather. The funding of affordable housing has been a deterrent since independence and has largely contributed to the issues on housing at hand to date. However, with the enactment of affordable housing act 2024, these challenges will be addressed. The Affordable Housing regulations 2024, therefore seeks to operationalize the Act to achieve progressive realization of adequate and affordable housing. The Affordable Housing regulations will therefore provide for better implementation of the Act. The Act requires the Cabinet Secretary to develop and submit to parliament the proposed Affordable Housing Regulations 2024 within 30 days upon commencement of the Act.

5.0 POLICY AND LEGAL FRAMEWORK

The provision of housing has gone through various reforms since independence. Following independence, the Housing Act Cap 117 was enacted to implement Housing Policy that led to formation of National Housing Corporation. The Vision 2030 which is the Economic blue print for social-political and economic transformation envisages the facilitation of production of 200,000 housing units annually through various initiatives. It further provides for the development of affordable, quality and affordable houses including social and physical infrastructure for lower income Kenyans of appropriate building materials and technologies.

The Constitution of Kenya, 2010 provides for the right to accessible and adequate housing under Article 43(1) (b), which is fundamental to enable individuals live in dignity. The Constitution envisages every person having a right to accessible and adequate housing as well as reasonable standards of sanitation. However, access to the right to a house for a majority of Kenyans has been elusive owing to the inadequate supply of low income housing units with the market having concentrated on the middle and high income housing units. This notwithstanding various attempts have been made to remedy the housing situation in Kenya through the policies and legislative framework such as the National Housing Policy and the National Slum Upgrading and Prevention Policies of 2016.

The National Housing Policy of 2016, Policy is to facilitate the provision of adequate shelter and a healthy living environment at an affordable cost to all socio-economic groups in order to foster sustainable human settlements. This will minimize the number of citizens living in shelters that are below the habitable living conditions. It will also curtail the mushrooming of slums and informal settlements especially in the cities and urban areas. The specific goals are to develop an effective housing delivery system that aims at meeting the needs of the populace; and to establish a housing delivery system that maintains balance in the economic development and environmental sustainability of communities.

On the other hand, the purpose of the National Slum Upgrading and Prevention policy of 2016 seeks to integrate the existing slums into the formal system, enabling them to enjoy reasonable basic amenities. The policy further seeks to prevent formation of new slums by adhering to urban planning, provision of infrastructure and low cost housing as well as establishing land banks for the urban poor and to relocate slum dwellers living in environmentally fragile and disaster prone areas to suitable locations.

The National Building Maintenance Policy (2015) aims at ensuring maintenance of buildings compulsory through a consistent approach to maintenance of the built environment so as to optimize the life cycle of the buildings. Therefore, all the affordable housing schemes developments and buildings will be required to have maintenance manual/ plan prepared during construction that should be revised every five years. This will ensure that the investments and schemes that are being undertaken by the Fund are kept in the right condition and that maintenance measures are put in place throughout the building life cycle.

The Development Framework Guidelines (DFGs) 2018 (Currently under Review), are the constitutive document providing qualitative guidance on the AHP. It incorporates supply, demand, and enabling environment interventions. The guidelines provides principles on social safeguards which consider the needs of vulnerable groups.

(a) Design principles cover accessibility for people with disabilities and the elderly

(b) Considerations on family sizes and culture have impacted design e.g. unit sizes, use of bedsitters for students only, etc.

(c) Continued revisions to framework based on feed-back from various stakeholders

Further, Housing and Human Settlement is further one of the key pillars under the Bottom Up Economic transformation Agenda (BETA). Under the Affordable Housing Programme, the Government targets to support provision of at least 250,000 affordable houses to Kenyans every year thereby increase the percentage of affordable housing supply from 2 percent to 50 percent. The Government is also implementing policy and administrative reforms to lower the cost of construction and improve access to affordable housing finance while creating jobs and entrepreneurial opportunities to all Kenyans.

As part of the process, the Affordable Housing Act 2024 has been enacted to *"give effect to Article 43(1)(b) of the Constitution; to provide a framework for development and access to affordable housing and institutional housing; and for connected purposes". The* provide an off take fund that will de-risk investors, and offer affordable finance to home-owners, bringing home ownership within the reach of the majority of urban population

The Affordable Housing Act 2024, will promote and ensure achievement in the housing sector development. The Act seeks to operationalize progressive realization of the right to housing and adequate standard of sanitation under article 43(1) (b) of the constitution. The Act provides for the establishment of the affordable housing fund to facilitate the implementation of affordable housing programs and projects, institutional housing and associated social and physical infrastructure. The Act further seeks to support implementation of the National Housing Policy of 2016 and the National Slum Upgrading and Prevention Policy of 2016.

The Proposed Affordable Housing Regulations 2024 are critical in ensuring better carrying out of the provisions stipulated under Section 59 (2) of the Affordable Housing Act whose aim is to achieve the progressive realization of the right to accessible and adequate housing. Based on the above, the Cabinet Secretary is mandated under Section 59 (3) to prepare regulations and table them in parliament within 30 days of the commencement of the Act. The affordable housing regulations are therefore a statutory instrument to operationalize the Act and to give effect to its provisions pursuant the Act.

6.0 STAKEHOLDER CONSULTATIONS

6.1 Development and Consultation Process

The process of developing Affordable Housing Regulations 2024 will involve stakeholder consultation to inform the policy and legislative options. It is noted that the Affordable Housing Act Section 59(3) mandates the Cabinet Secretary to table the regulations within 30 days after commencement of the Act. The regulation making process shall be a consultative process which will involve key stakeholders, including the Public Sector, National and County Governments, Technical Institutions, Employers, Private Sector, financial institutions, mortgage institutions, Unions, Professionals and Professional Associations, pension funds, Internal Stakeholders and the general public.

6.2 Inter-Agency Committee on the development of Affordable Housing Regulations 2024

In order to guide the initial development of the Affordable Housing draft Regulations, an inter-Agency committee comprising of representatives from both public (national and county government representatives) and private sector actors was appointed on 21st March 2024.The committee is mandated to develop the affordable housing regulations for the better carrying into effect the provisions of section 59 that gives the Cabinet Secretary in consultation with the Board the power to make regulations under the Affordable Housing Act 2024.

The Terms of reference for Committee is to:

(a) Prepare draft regulations for the affordable housing Act 2024
(b) Conducting research, reviewing data and constructively representing views towards development of the regulations.
(c) Identify any consequential amendments of any laws required as a result of effecting the regulations.
(d) Identify any consequential amendments' of any laws required as a result of affecting the regulations.
(e) Engage key stakeholders during the development of the regulations to ensure robust regulations that incorporate stakeholder's views.
(f) Prepare any required accompanying documents required to ensure the terms of reference are effective met.
(g) Any other assigned duty by the Cabinet Secretary or Principal Secretary SDHUD.

Following the above appointment the Inter agency Committee has prepared the draft regulations which are being subjected to public participation in line with the Terms of reference.

6.3 Planned consultations and public participation

Extensive consultations will be conducted during the preparation of the Affordable Housing Regulations 2024 before the finalization of the regulations. The nationwide public consultations on the draft Regulations will be organized with all the key stakeholders and their input considered as far as possible before finalization of these Regulations. All the key stakeholders will be consulted through physical/virtual meetings, memoranda, public notices in the media, websites, letters and gazette notices. Public participation forums will be organized in various Counties across the Country.

6.4 Legal requirements relating to consultation and public participation

The process of stakeholder consultations in preparation of the Proposed Affordable Housing Regulations, 2024 is in line with Articles 10, 201 of the Constitution of Kenya 2010 and Section 5 of the Statutory Instruments Act 2013.

7.0 POSSIBLE ALTERNATIVE AND PRACTICABLE MEANS OF ACHIEVING THE FOREGOING OBJECTIVES, INCLUDING OTHER REGULATORY AS WELL AS NON-REGULATORY OPTIONS

The Affordable Housing Act gives powers to the Cabinet Secretary in consultation with the Board to prepare and table the regulations within 30 days of commencement of the Act. The preparations, submission to parliament of the Affordable Housing regulations 2024 is therefore a legal requirement under the Act. The regulation are being made under affordable Housing Act 2024 to give effect to the provisions of the Act. The regulations seeks among other things to provide for means of administering the Affordable Housing Act, 2024 by the Cabinet Secretary, with respect to: Eligibility criteria for allocation of affordable housing, application and allocation of affordable housing units and implementation of the powers assigned to the Cabinet Secretary to issue regulations under Section 59 of the Affordable Housing Act among others. In particular the Affordable Housing Regulations, 2024 seek to make provisions for:-

(a) Eligibility, application and validity for exemptions
(b) the minimum eligibility requirements for a natural person to access the affordable housing units
(c) Provision on Rate of deposit
(d) Change of affordable housing unit
(e) Default in payment and recourse thereafter
(f) Application for development of affordable housing, social and physical infrastructure
(g) Eligibility to enter into off take agreement and financing agreements
(h) Criteria for off-take of affordable housing units
(i) Withdrawal of voluntary savings
(j) Restrictions on disposal of affordable housing units

The proposed affordable housing regulation 2024 therefore provides guidance for better implementation of provisions of the Affordable Housing Act. Section 59(3) of Act clearly stipulates that the Cabinet Secretary shall prepare and submit to parliament the regulations within 30 days of the commencement of this Act. The Act further stipulates that:

(a) *"Regulations made under this section shall not take effect unless approved by a resolution passed by Parliament"* Section 59(4).

(b) It further notes that, *"If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to it for approval, the House shall be deemed to have approved those regulations".*

It is therefore against this background that these regulations require to be enacted with no any other option available for consideration.

8.0 THE EFFECT OF THE PROPOSED REGULATION

The effect of Affordable Housing regulations 2024, is therefore to operationalize the Act to achieve progressive realization of adequate and affordable housing. The proposed regulations therefore provide guidance on the implementation of the provisions of the Affordable Housing Act 2024. The effect of the proposed affordable housing regulations 2024 includes the following:

a) The implementation of these Regulations will ensure achievement of the Government housing commitment which is to turn housing challenge into an economic opportunity; and ensure housing production to create quality jobs for the 100,000 or so young people graduating from TVETs every year directly in the construction sector and indirectly through the production of building products.
b) These Regulations will facilitate achievement of the economic and social rights guaranteed in Article 43(1)(b) of the constitution through: - i) increasing the supply of housing to 250,000 per annum; increasing the supply of affordable homes from 2 per cent to 50 per cent; ii) structuring affordable long-term housing finance schemes; iii) growing the number of mortgages from 30,000 to 1,000,000 by enabling low-cost mortgages; iv) strengthening Jua Kali industry capacity to produce high quality construction productions and materials and v) giving developers incentives to build more affordable housing, that will guarantee off take of houses from developers.
c) It is expected that enactment and implementation of these regulations will open up affordable home financing for development of sustainable fully serviced affordable housing schemes with integrated communities and households with all the requisite social and physical infrastructure.
d) These Regulations will cushion Kenyans against: high rentals; high lending rates by financial institutions.
e) The Regulations will further provide for charging of an affordable and sustainable interest rate on loans to cushion the vulnerable from largely inaccessible lending that has been experienced in recent times;

f) The Regulations will guard against market distortions by ensuring that envisaged partnerships with the Fund, are not exclusive or preferential, are technology neutral and do not confer market advantage to any partners over competitors.
g) The implementation of the Regulations will enable the Government to enhance economic participation of special interest groups and micro, small and medium enterprise in the creation of jobs and general economic development. Further, the Regulations will promote economic growth by linking MSMEs and Jua Kali sector to the affordable housing projects.
h) These regulations have accorded Government with the flexibility to enhance digitization.
i) The Regulations will leverage on the existing commercial infrastructure, including mobile payments platforms and financial institutions, including agency, co-financing and on-lending partnerships.

The proposed Regulations provides the basis for effective and structured way of undertaking implementation of affordable housing and provision of affordable homes to Kenyans. The regulations provides a well cordinated approach and application for off take thus incorporating the private sector in provision of the affordable housing. The regulaitons also provides flexibility for innovation and eligibility across income levels as well as provisions for voluntary savings towards home ownership. Lastly, the regulations also encourage participation of implementing agencies from National and County Governments. If the regulations are not passed, the provisions of the Act shall not be fully implemented as envisaged and there will be ambiguity on how to address the various issues arising thereof.

9.0 ASSESSMENT OF THE COSTS AND BENEFITS OF THE PROPOSED AFFORDABLE HOUSING REGULATIONS, 2024

The implementation provides a framework for the delivery of Affordable Housing and Institutional Housing. The implementation of the proposed Affordable Housing Regulations, 2024 may have some potential challenges. The resultant effect may include an increase in the cost of business that may adversely impact businesses that are financially weak.

It will also however create employment opportunities for businesses in the Real Estate sector or businesses supporting the Real Estate sector owing to increased opportunities. Further the lack of adequate capacity by some of Kenyans to acquire and be allocated affordable housing units due to lack of income to support the repayments of the allocated unit may result in (i) default by unit purchasers that may affect the Fund and subsequent repossession of the units where it is impractically possible for a unit buyer to remedy the situation; (ii) Non-performance by the implementing agencies who have been entrusted to implement the affordable projects under the Affordable Housing Act, 2024; and the risk of Inadequate affordable housing units in the initial period of the program.

However, enactment of the proposed regulations will not occasion any additional costs towards implementation, as it seeks to further provide clarity on the implementation of the various provisions within the Affordable Housing Act, 2024. The proposed Regulations seek to provide a robust implementation mechanism for provisions identified under Section 59 (2) and further enable better implementation of the Act. The development of the proposed regulations therefore will create a positive impact in the achievement of the intended objective of the Affordable Housing

10.0 DRAFT COPY OF THE PROPOSED STATUTORY RULE

A draft copy of the proposed Affordable Housing Regulations, 2024 is posted on the website of the Ministry of Lands, Public Works, Housing and Urban Development , State Department for Housing & urban Development at www.housingandurban.go.ke. The comments or inputs or memoranda on the Regulations may be forwarded, in the prescribed format, to the Principal Secretary, State Department for Housing and Urban Development, P.O. Box 30119-00100, Nairobi; hand delivered to the Office of the Principal Secretary, Ardhi House on 6th Floor, Nairobi; or soft copy emailed to ahp@housingandurban.go.ke to be received by **Monday, April 29th, 2024 at 5.00 pm.**

HON. ALICE M. WAHOME

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