

AFFORDABLE HOUSING POLICY PRIORITIES 2009

NAHMA will work closely with the new Obama Administration and Congress in order to address the major challenges to developing and preserving quality affordable multifamily housing. To that end, NAHMA has compiled a list of affordable multifamily housing policy priorities which we believe are necessary to restore owners' confidence in federal housing programs, streamline administration of the programs, and increase the choices of affordable communities of quality for low-income Americans. These priorities include:

1. Ensuring full funding and timely payment of project-based Section 8 housing assistance payment (HAP) contracts.
2. Stabilizing and restarting the residential housing tax credit marketplace.
3. Advancing legislation to preserve the affordable multifamily portfolio.
4. Advancing legislation that increases funding for key HUD and RHS affordable housing programs, at least to keep pace with inflation.
5. Obtaining relief across the affordable portfolio for escalating utility/operating costs.
6. Ensuring Federal agencies allow appropriate public review and comment prior to issuance of new guidelines, policies, guidance or handbook changes, etc. that impact affordable housing.
7. Advancing an interagency working group with stakeholder participation to identify and resolve major regulatory conflicts for mixed subsidy properties.
8. Advancing legislation allowing the Department of Housing and Urban Development to better serve persons with limited proficiency in the English language by providing technical assistance to recipients of Federal funds and continue working with HUD to identify documents for translation.
9. Obtaining clarity and consistency in application of HUD's previous participation certification process.
10. Obtaining clarity and consistency in REAC inspections, protocol and scoring.

Please find more detailed descriptions of each NAHMA priority attached.

1. Ensuring full funding and timely payment of project-based Section 8 housing assistance payment (HAP) contracts.

Shortfalls in the project-based Section 8 program have had two immediate impacts on the day-to-day operations of affordable properties: late subsidy payments to owners and “incremental” or partial funding of the housing assistance payment (HAP) subsidy contracts. Housing Assistance Payments (HAPs) are rental subsidies HUD pays to operators of privately owned subsidized housing. In the project-based Section 8 program, HUD contracts with affordable housing providers to pay the difference between the rent and 30 percent of a qualified tenant’s income. HUD’s failure to make timely HAPs has been plaguing property managers and owners for more than a decade. To cover the revenue shortfalls when HAP payments are late, owners must divert money from other important accounts, resulting in late payments on mortgages or other bills, and compromising their ability to manage properties effectively.

At contract renewal, HUD has been providing less than a full year of annual subsidy to property owners. HUD offers owners “incremental” contracts that obligate owners to provide housing for 12 month terms but may only guarantee funding for a couple months, or even weeks, on that contract. This practice has shaken housing operators’ confidence in the reliability of Section 8 funding. Likewise, this process results in wasted administrative time for the HUD staff who must reprocess the funding.

Congress has become increasingly concerned about the negative effects of inadequate funding for the project-based Section 8 program and incremental payments. In November 2005, the GAO confirmed that late HAPs were a problem and recommended that HUD streamline and automate the contract renewal process to prevent errors and delays, improve its monitoring of contract funding levels and notify owners in advance of late payments. However, the problem reached a crisis during the summer of 2007, when project-based section 8 properties nationwide were unpaid for months at a time. In October 2007, the House Financial Services Subcommittee on Housing and Community Opportunity held a hearing to examine the impact of late HAPs and inadequate Section 8 funding. As a result of this hearing, Subcommittee Chair Maxine Waters included language imposing penalties on HUD for late HAPs in the Mark-to-Market Extension Act of 2007 (H.R. 3965). In the *Views and Estimates of the Committee on Financial Services on the Concurrent Resolution on the Budget for FY 2009*, the Committee estimated, “The funding needed to restore the practice of funding all contracts for a full year is approximately \$2.8 billion. This could be provided through a one-time regular or emergency appropriation in this amount. However, the problem could alternatively be resolved through an advance appropriation.”

Over the years, the House and Senate Appropriations Committees issued numerous committee reports which detailed their frustration with HUD’s inability or unwillingness to provide accurate funding estimates for the project-based Section 8 program. On April 23, 2008, the House Appropriations Subcommittee on Transportation, Housing and Urban Development and Related Agencies held a hearing to examine the challenges of the Project-Based Section 8 Program, with an emphasis on funding problems. In the FY 09 Transportation-HUD Appropriations bills, both the House and Senate Appropriations Committees proposed substantial funding increases for project-based Section 8 to help restore some stability and confidence in the program. Likewise, the American Recovery and Reinvestment Act (HR 1, PL 111-5) provided an additional \$2 billion to help fund the 12-month terms of project-based Section 8 contracts.

NAHMA is requesting that Congress and the Administration:

- **Conduct oversight to ensure FY 2009 project-based Section 8 HAP contracts are fully funded for their 12-month terms;**
- **Provide sufficient FY 2010 appropriations to fully fund the 12-month contracts at the time of renewal;**
- **Impose interest penalties on HUD for late housing assistance payments to owners; and**
- **Require HUD to provide more timely obligations of Project-Based Section 8 funds for contract renewals.**

2. Stabilizing and restarting the residential housing tax credit marketplace.

As the financial markets situation deteriorated in the second half of 2008, the marketplace for Low Income Housing Tax Credits (LIHTC) also destabilized. The Tax Credit program, which is targeted to serve lower income workforce and rural households, is by far the largest remaining affordable housing program for constructing and preserving rental housing. As a direct investment that provides immediate job creation, keeping the Low Income Housing Tax Credit program viable is essential to the job growth that will bring the economy back with good long-term investments.

A frozen investor market, less demand for the LIHTCs and substantial declines in credit prices are presenting major challenges to LIHTC properties across the nation, but especially in rural communities. Properties whose syndications are complete have been experiencing delays in closing, or failing to close at all. These events have had significant impacts on construction and bridge financing lenders, forcing further reductions in available financing. Pricing on credits declined from the mid 80-cent on the dollar range to the low 70-cent range, forcing sponsors to raise additional financing or equity prior to closing, often in very short time frames. The largest purchasers of Tax Credits in recent years have been Fannie Mae, Freddie Mac, and large banks. Those firms represented more than half of the marketplace, and all have withdrawn from the market for the foreseeable future. Moreover, many banks and investors such as Fannie and Freddie are holding excess Tax Credits for which they have no offsetting gains. These are currently being held as assets on their books which have expiration dates and lose essentially ten percent of their value each year if they are not utilized. This creates a potential for a "fire sale" of these assets at values that are likely to be substantially below market. The availability of these "seasoned" credits at discount prices will likely further undercut the rapidly thinning market for newly issued credits for projects which have yet to be built.

A sustained drought in new production or preservation could cause the existing funding infrastructure which facilitates these efforts to collapse. It would require substantial time and energy to re-invigorate the infrastructure. New production contributes significant funds to localities through building permit fees, impact fees, and related infrastructure funding. This source of funding is essential to maintain and expand infrastructure in cities nationwide.

NAHMA is committed to stabilizing and restarting the LIHTC market in order to keep the infrastructure of affordable housing in place and provide a base for the expansion of the program. We have recommended a number of short-term and long-term solutions to address the current challenges.

In the American Recovery and Reinvestment Act (PL 111-5, HR 1), Congress answered NAHMA's call for gap financing to cover the shortfalls caused by the lack of equity investment in LIHTC properties. Two new options state housing agencies can use to help shovel-ready projects move forward include exchanging a portion of their 2009 LIHTC allocations for cash grants from the Treasury Department and a \$2.25 billion program through HOME for gap financing to restart low-income housing construction stalled during the credit crisis. NAHMA believes these measures were necessary to provide immediate stabilization to the program and move deals in the pipeline forward.

Nevertheless, we firmly believe additional legislation is necessary to attract investors back to the LIHTC market and to expand the base of investors. There are a number of additional proposals that could have a positive impact on stabilizing the LIHTC program within the next six months and beyond. These include (but are not limited to):

- **Requiring all LIHTCs currently held by the Government Sponsored Enterprises (Fannie and Freddie) and other institutions in federal conservatorship to be either transferred to the Treasury or held in the respective institutions to maturity.** This proposal is critical to preventing a "fire sale" that will further devalue the market for new Tax Credits and increase the financing gaps for projects;
- **Permitting carry back of LIHTCs for up to 5 years and permitting credits to be used to offset AMT Liability during the period.** This provision will allay concerns by potential new investors about their ability to use Housing Credits in the future if their tax liability changes. It will also help discourage wholesale selling of existing Housing Credits.

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- **Allowing LIHTC acceleration of 200 percent for the first three years.** This proposal would broaden the existing base of investors by making the return to the investor much more attractive, while maintaining the pricing efficiency of the program;
- **Temporarily reducing the credit period from 10 to 5 years;**
- **Revising the current Federal Income Tax Code to create incentives for individual investors, subchapter S corporations, and small corporations to invest in Tax Credits** will broaden and revitalize the market; and
- **Allowing state agencies with unused LIHTCs designated for disaster areas to include them in the cash exchange grant program.**

These changes will jumpstart and maintain ongoing development to keep the infrastructure of affordable housing in place. They would also help address the severe shortage of workforce and rural housing.

Other issues NAHMA believes Congress should address to ensure the ongoing financial viability of existing tax credit properties include:

- **Income Limits.** With both stagnant and decreasing area median incomes, and the fact that rents are driven by the income limits, tax credit property rents are effectively capped in many markets. Over time as the current recession goes on, the properties with rental charges at or near the maximum allowable rents need relief. One approach to consider is revising the current statutes to address the need to accommodate increasing utility costs in the rent cap formula. With the severe erosion in incomes in some Midwestern states, consideration needs to be given to how existing housing will be affected when median incomes decrease materially as the 2009 income limits are issued, as operating expenses increase and rents remain flat.
- **Utility Allowance.** In the LIHTC program, the tenants' utility allowance (UA) is part of the gross rent formula. Also, maximum tax credit rents can not exceed 30 percent of 60 percent of area median income. When the UA increases, the rent to the owner decreases. NAHMA believes Congress should seriously examine statutory changes to the LIHTC program to help properties deal with increasing utility costs. Ideally, our members would like Congress to consider removing the UA from the rent equation. Other ideas for relief could include decoupling the maximum LIHTC rents from income limits (which are often stagnant), setting the UA at a fixed percentage at the time of underwriting for the property, providing a rent increase tied to an objective indicator—such as the price of oil and revising the new LIHTC Utility Allowance Regulation to remove obstacles to submetering utilities on tax credit properties.
- **Municipally Imposed Services.** Consideration should be given to allowing owners to recover the costs of additional services not generally provided in rental apartments that are being imposed by some municipalities. These costs should be allowed to be passed through in the rents without limitation in the rent caps. In other words, if a municipality determines it will impose a service or fee that is not generally considered as a property expense, the associated cost can be passed through without reference to the maximum tax credit rents.
- **Tax Credit Fees and Charges.** HUD should be directed to treat Tax Credit Fees, Asset Monitoring Fees and related charges as normal project operating expenses. Currently, HUD is taking the position that these fees are unrelated to the operation of the property and therefore not project expenses.

3. Advancing legislation to preserve the affordable multifamily portfolio.

Preservation is a cost-effective way to prevent a net loss of affordable rental housing. To NAHMA, “preservation” means maintaining the current portfolio of privately-owned, federally-assisted apartments as affordable to low-income families through a public-private partnership which offers **voluntary** incentives to owners and ensures long-term sustainability of the properties, including the ability to recapitalize.

The Government Accountability Office (GAO) identified major challenges to preservation efforts. In testimony before the House Financial Services Subcommittee on Housing and Community Opportunity, David G. Wood, GAO’s Director of Financial Markets and Community Investment (see report GAO-04-992T, July 20, 2004), discussed the impact maturing mortgages will have on the affordable portfolio and tenants. Mr. Wood noted, “Of the 11,267 subsidized properties (containing 914,441 units) with HUD mortgages, 21 percent (2,328 properties containing 236,650 units) have mortgages that are scheduled to mature from 2003 through 2013.” The majority of these mortgages will mature between 2011 and 2013. On the maturity date, affordability commitments which were promised as a condition of the mortgage will be satisfied. GAO cautioned,

“...Low-income tenants in over 101,000 units may have to pay higher rents or move when HUD-subsidized mortgages reach maturity...There is no statutory authority that requires HUD to offer tenants special protections, such as enhanced vouchers, when a HUD mortgage matures. However, tenants who receive rental assistance in properties with maturing mortgages would be eligible for enhanced vouchers under rental assistance programs, such as project-based Section 8.”

In April 2007 the GAO released a report, “Project-Based Rental Assistance: HUD Should Update Its Policies and Procedures to Keep Pace with the Changing Housing Market (GAO-07-290).” This report analyzed contract activity from 2001 to 2005. It focused on the number of opt-outs, which properties were most at-risk, HUD’s preservation tools and reasons for the decisions to continue or leave the program. GAO concluded that local market conditions are the primary factor in the opt-out decision, but they also acknowledged that other factors could eventually outweigh purely economic factors. NAHMA generally agrees with GAO’s assessment, but we would caution that this study was released prior to the financial chaos project-based Section 8 properties experienced from July through September 2007. Late Housing Assistance Payments (HAPs) from HUD and insufficient contract funding are now an economic consideration. Also, the “HUD fatigue” GAO discussed has increased exponentially among our for-profit and non-profit members. We believe this “HUD fatigue” has resulted from an increasingly complicated, burdensome and adversarial regulatory climate.

NAHMA supports legislative efforts to preserve affordable multifamily housing. We respectfully recommend that any multifamily preservation bill be guided by the following principles.

1. Restore confidence in the guarantee of timely, fully-funded project-based Section 8 HAP payments. This will involve providing the necessary appropriations to pay the full 12 month increments of HAP contracts at the earliest opportunity and addressing any regulatory issues that affect the timeliness of HAP payments.

2. Ensure long-term financial and physical sustainability of preserved affordable properties. The keys to achieving this goal include legislative changes which will:

- Address obsolete operating and utility cost underwriting assumptions for the early (pre-October 1, 2001) mark-to-market properties and allow a voluntary second mortgage restructuring to help the early restructured properties with rehabilitation needs;
 - Create a desperately needed mechanism to provide real time, mid-cycle relief for unforeseen operating costs between rent increases;
 - Direct GAO to examine the accuracy of Operating Cost Adjustment Factors (OCAFs) as an inflation factor used to determine annual rent adjustments;
 - Ensure timely completion of the Mark-Up-To-Market process. Properties most at risk of opting-out are those with below market rents in desirable neighborhoods, Nevertheless, NAHMA has received reports
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from several members that the Mark-Up-To-Market process can drag out for months or more than a year. We are requesting legislation to correct the more common time-lapse problems in this process.

- Finally, providing incentives and funding for green initiatives is increasingly important as energy costs rise. We would simply caution that such incentives should be voluntary on the owner's part, and should not constitute unfunded mandates.

3. Recognize the essential role of the Section 42 Low Income Housing Tax Credit Program to preservation. The equity provided through the LIHTC program has been essential for preserving and rehabilitating older HUD-assisted properties. Without the equity from the tax credits, many of the preserved HUD properties may have opted-out, defaulted on their mortgages, or fallen into physical disrepair. NAHMA believes an interagency group should be established to resolve conflicting regulatory requirements in the major federal rental assistance programs.

4. Extend tenant protections when mortgages mature and when HAP payments stop. NAHMA supports extending tenant protection vouchers to unassisted tenants in properties when the HUD mortgage matures. We also believe enhanced vouchers (which protect tenants when owners prepay or opt-out) for tenants should be available when HAP payments stop for any reason (especially due to the government's failure to pay owners)--even before the end of the required one-year notice period.

5. Create incentives to encourage voluntary transfer and preservation of affordable properties. NAHMA strongly supports exit tax relief for owners who sell their properties to buyers who will continue operating the projects as affordable housing. We also believe a grant program which provides gap financing to qualified preservation entities (whether for-profit or non-profit) would facilitate more successful preservation transactions.

6. Require HUD's leadership to take meaningful, proactive steps to restore a partnership approach with the multifamily owner and management agent communities. There is room for common sense and transparency in regulatory compliance. Simple gestures such as allowing reasonable implementation time to incorporate policy changes, breaking the cycle of micromanagement, placing an emphasis on the "reduction" component of the paperwork reduction act as it applies to multifamily forms and information collections, following transparent procedures for issuing policies would go a long way in addressing the "HUD fatigue" owners and agents feel.

4. Advancing legislation that increases funding for key HUD and RHS affordable housing programs at least to keep pace with inflation.

NAHMA supports a strong budget for federal multifamily housing programs. **We ask Congress to spare these important HUD and RHS multifamily housing programs from budget cuts and, at a minimum, increase their funding to match inflation.**

It is imperative to fund all rental subsidy contract renewals in the project-based and tenant-based Section 8 programs. In the project-based Section 8 program, a rental subsidy is attached to the apartment. By subsidizing the difference between 30 percent of a tenant's income and the rent for the apartment, the project-based Section 8 program ensures the availability of affordable housing for low-income families. In the tenant-based Section 8 program, low-income families receive a voucher which pays the difference between 30 percent of their income and the rent for the apartment of their choice. In each case, property owners depend on the timeliness of the subsidy promised in the Housing Assistance Payment (HAP) contract. It is essential that Congress provides sufficient appropriations to fully fund the 12 month terms of these contracts.

For the past several years, the Bush Administration has proposed cuts to important multifamily housing production programs. The Section 202 Housing for the Elderly and the Section 811 Housing for the Disabled programs were targeted for severe cuts in the FY 08 and FY 09 budget request. These programs offer competitive capital grants to construct apartments for very low-income elderly and disabled families. In each of the FY 09, FY 08, and FY 07 budget requests, the Bush Administration proposed eliminating funding completely for the Section 515 rural housing program. Administered by the U.S. Department of Agriculture, Section 515 Rural Rental Housing Loans are direct, competitive mortgage loans made to provide affordable multifamily rental housing for low-income families, the elderly and persons with disabilities in rural America. NAHMA is pleased that Congress spared these programs from draconian cuts; however, we ask that appropriations this year provide increases *at least* to match inflation.

Similar to the U.S. Department of Housing and Urban Development's project-based Section 8 program, the U.S. Department of Agriculture's Section 521 Rural Rental Assistance (RA) program is project-based rental assistance which is often used in conjunction with Section 515 housing or farm labor housing. The RA program pays owners of multifamily housing complexes the difference between tenants' contributions (30 percent of their income) and the monthly rental rate. We urge Congress to continue funding the 12-month increments on these rental assistance contracts.

The Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME) programs also play vital roles in financing affordable housing. State and local governments use CDBG funds to provide decent affordable housing for low and moderate income families, to provide community services, and to create jobs. The Bush Administration requested cuts in the CDBG program in several proposed budgets. State and local governments often provide CDBG funds to affordable housing developers for gap financing. HOME is a Federal block grant to state and local governments to create affordable housing for low-income households. HOME funds may be used to assist homeowners and homebuyers with purchase or rehabilitation financing assistance, to build or rehabilitate housing for rent or ownership, site acquisition or improvement, demolition of dilapidated housing to make way for HOME-assisted development, payment of relocation expenses for displaced families, or to provide tenant-based rental assistance contracts of up to 2 years. For FY 08, Congress approved moderate cuts to both CDBG and HOME. NAHMA believes these cuts should be restored, and the programs should receive at least inflationary increases.

5. Obtaining relief across the affordable portfolio for escalating utility/operating costs.

Two key concerns of affordable multifamily housing operators are the escalating utility and operating costs for rent-restricted properties at a time where there are relatively few meaningful rent increases.

In August 2006, a coalition of affordable multifamily housing industry trade groups developed the Recognized Increased Cost (RIC) proposal. The RIC plan would provide *real time*, mid-cycle relief for unforeseen operating costs between rent increases. Properties whose rents are approved by HUD (which include Section 515 rural housing with project-based Section 8) would be eligible for RIC loans. It assumes that owners will borrow against future higher rents based on the recognized cost increase. Sources for RIC loans include residual receipts, replacement reserves, forgoing deposits to replacement reserves, or other sources such as owner affiliates.

Such an approach yields three regulatory consequences:

- At the next rent increase, the property's baseline rents will be increased by the RIC, as a starting point for processing the next rent increase (budget-based, OCAF, AAF, or otherwise);
- Similarly, the property's 'comparable market rents' will likewise be presumed to have risen by the RIC; and
- Owners who borrow funds to cover shortfalls between application and the post-RIC rent increase will have the debt service on that borrowing (a "RIC Loan") recognized as a project expense.

Because HUD declined to implement this proposal, **NAHMA is seeking a legislative change which will include cost increases for:**

- **Higher charges for utilities, insurance, property taxes, labor, supplies, equipment, and regulatory requirements;**
- **Unreimbursed losses from natural disasters; and**
- **Other costs the Secretary may approve (subject to limitations).**

Like HUD properties, LIHTC properties are also struggling with utility costs. In the LIHTC program, by law, the tenants' utility allowance (UA) is part of the gross rent formula. Also, maximum tax credit rents cannot exceed 30 percent of 60 percent of area median income. When the UA increases, the rent to the owner decreases. Operating margins on these properties are thin, and because the LIHTC program is intended to serve low-income families, there are limited options for increasing cash-flow.

In 2008, the Internal Revenue Service updated its LIHTC utility allowance regulations. The new rule offers three new options owners may use to calculate the UA for tenant-paid utilities. It should provide for more accurate UA calculations—especially in newer construction properties which were built with more energy-efficient materials. However, the new UA options are available to a LIHTC property only if it "is neither an RHS-assisted nor HUD-regulated building, and no tenant in the building receives RHS tenant assistance." Likewise, owners may not use the new UA options if utilities are sub-metered.

A more daunting question is how to ensure long-term viability of all LIHTC properties if utility costs continue to skyrocket and depress rents over time. **NAHMA believes Congress should seriously examine statutory changes to the LIHTC program to help properties deal with increasing utility costs.** Ideally, our members would like Congress to consider removing the UA from the rent equation. Other ideas for relief could include decoupling the maximum LIHTC rents from income limits (which are often stagnant), setting the UA at a fixed percentage at the time of underwriting for the property, or providing a rent increase tied to an objective indicator—such as the price of oil or other means. We also believe GAO could be helpful in assessing the extent of the strain placed on LIHTC properties (including mixed-subsidy properties) by escalating utility costs and recommending solutions for dealing with this challenge.

6. Ensuring Federal agencies allow appropriate public review and comment prior to issuing new guidelines, policies, guidance or handbook changes, etc. that impact affordable housing.

NAHMA is extremely concerned with the manner in which HUD has changed long-standing policies, or issued new policies, without going through the formal rule-making process to provide for appropriate comment and review by industry stakeholders. We urge the new Administration to commit attention at the highest levels of leadership on the importance of transparency and issuing policy changes or guidance with proper administrative procedures.

There are numerous examples to illustrate the breakdown in HUD's administrative procedures. Last year, new policies pertaining to the multifamily model leases were issued via a HUD listserve that has a voluntary subscription basis, and further new policy was made via Q&A to this voluntary listserve. We believe this is an inappropriate approach which should be discontinued in favor of a more deliberate, thoughtful and open approach that provides for review and comment by practitioners in the industry.

To achieve regulatory compliance communication with industry partners is critical—especially with the layers of oversight from different contract administrators and field offices. Affordable housing operators report that an increasing amount of time at properties is spent keeping up with policy interpretations that (from the owner/agent's point of view) seem to come out of nowhere, and an even greater amount of time is spent trying to correct erroneous interpretations after the fact. We believe that greater consistency in policy implementation and greater regulatory compliance could be achieved if HUD used proper administrative procedures to communicate policy changes, interpretations, or guidance *and promptly shared those communications with industry stakeholders.*

The Office of Management and Budget's "Final Bulletin for Agency Good Guidance Practices" provides a useful framework to increase the quality, transparency, accountability, and coordination of agency guidance documents. Published in the *Federal Register* January 25, 2007, the bulletin gives a definition of a "significant guidance document" and an "economically significant guidance document." It then establishes agency approval procedures, standard elements, and procedures for providing public feedback or comment on these documents.

A commitment on the part of the new Obama Administration to adhere to these good guidance procedures would be a healthy step in the right direction. However, NAHMA urges administration officials to treat these practices as the *minimum* requirements for agency transparency. Many HUD policies which affect regulatory compliance will fall below the \$100 million economic impact threshold. Similarly, internal agency communications which transmit policy interpretations that affect regulatory compliance should be publicly disclosed. Going forward, procedures must be developed to inform the industry more quickly about policy changes which affect the owner/agent's ability to do their job of keeping properties in compliance. Compliance with HUD policy changes should not depend on whether an agent is lucky enough to stumble across a memo. There is absolutely no substitute for open communication to achieve regulatory compliance.

7. Advancing an interagency working group with stakeholder participation to identify and resolve major regulatory conflicts for mixed subsidy properties.

Federal affordable multifamily housing programs span three agencies: the Department of Agriculture (USDA)—Rural Housing Service (RHS), Internal Revenue Service (IRS)—Treasury, and the Department of Housing and Urban Development (HUD). In recent years, more and more properties are using multiple sources of government assistance from these three agencies to preserve, rehabilitate, and/or recapitalize the projects. It is increasingly common to preserve older HUD-assisted Project-Based Section 8 housing with Low Income Housing Tax Credits (LIHTC) administered by the IRS (and local state agencies). In fact, without the equity from the tax credits, many of the preserved HUD properties may have opted-out, defaulted on their mortgages or fallen into physical disrepair. Likewise, mixed subsidy properties that combine RHS' Section 515 program with HUD's Project Based Section 8 rental assistance have existed for decades. With multiple agencies providing the subsidies to one property, there are often conflicting regulatory issues. **NAHMA believes a working group between the three agencies with industry participation should be established to identify and resolve conflicting regulatory requirements in the major federal rental assistance programs.**

The Housing and Economic Recovery Act of 2008 (P.L. 110-289) included a number of provisions that remove major barriers to the development and management of mixed-financed properties. The new law also requires HUD and RHS to consult with IRS about coordinating rules and policies to facilitate using tax credits with their multifamily housing programs. NAHMA believes an interagency working group would facilitate the required consultations.

Our proposed working group would also offer agencies the opportunity to address remaining regulatory barriers to developing and managing mixed-financed properties. For example, we strongly believe HUD should overturn its policy prohibiting owners from charging mandatory LIHTC compliance fees as eligible project expenses. It is unfair for HUD to rely so heavily on the LIHTC program as a preservation tool and then require owners to pay out-of-pocket for mandatory fees associated with the LIHTC program.

Likewise, HUD has instructed owners and management agents of LIHTC and other mixed subsidy properties not to use its Enterprise Income Verification (EIV) income matching system for tenants certifying under the LIHTC program. Congress should pass legislation to enable the Internal Revenue Service and the Rural Housing Service to participate in HUD's Enterprise Income Verification (EIV) income matching program. It is essential to address the statutory barriers before HUD issues its final rule requiring owners to participate in EIV. EIV gives owners and management agents access to the Health and Human Services new hires database, unemployment information and social security information, which would be untraceable if the tenant did not voluntarily report that income. This situation is problematic for our members who managed mixed-financed affordable rental properties and must use third parties to certify incomes for LIHTC tenants. Without access to the EIV information, housing providers may miss unreported income due to inaccurate or incomplete information. Furthermore, owners and agents of mixed-finance properties must use different tenant income verification processes and even keep the tenant files separated if EIV was used for income verification. RHS and IRS should be given access to EIV in order to ensure the most accurate tenant eligibility information and the simplest income verification process.

8. Advancing legislation allowing the Department of Housing and Urban Development to better serve persons with limited proficiency in the English language by providing technical assistance to recipients of Federal funds and continue working with HUD to identify documents for translation.

On August 11, 2000, President Clinton's Executive Order 13166 directed each federal agency to publish guidance for recipients of federal funds to inform them of obligations under Title VI of the Civil Rights Act of 1964 to provide persons with limited English proficiency (LEP) meaningful access to federal programs and activities.

In March 2007, HUD's final LEP guidance took effect. The guidance stated that recipients of HUD funding, including affordable rental housing providers, were obligated to provide translated documents and oral interpretation services to persons with limited English proficiency. However, at the time the guidance took effect, HUD had not provided additional funding to offset the costs associated with providing language services, nor had the Department identified a specific list of documents housing providers were expected to translate. While NAHMA supported the goals of LEP guidance, our members were concerned about the unfunded costs to properties associated with providing language services.

In order to address the concerns of industry stakeholders, civil rights advocates, and tenants with limited English proficiency, Congress has taken important actions to improve implementation of the Department's Limited English Proficiency (LEP) guidance. First, Rep. Maxine Waters included LEP authorization language in the Section 8 Voucher Reform Act (SEVRA) of 2007 (H.R. 1851). This legislation was supported by a coalition of multifamily housing industry and civil rights advocacy organizations. Of particular interest to affordable housing providers were provisions in the bill to:

- Create a task force of industry and civil rights stakeholders to identify vital documents (to include both official HUD forms and unofficial property documents);
- Require HUD to translate the vital documents within six months;
- Create a HUD-administered 1-800 hotline to assist with oral interpretation needs; and
- Authorize appropriations.

Senator Robert Menendez subsequently introduced this LEP authorization language as free-standing legislation (S. 2018) to allow HUD to better serve persons with limited proficiency in the English language by providing technical assistance to recipients of Federal funds. It was also included in the Senate version of the Section 8 Voucher Reform Act, S. 2684.

Although the LEP authorization language did not become law before the 110th Congress adjourned, \$380,000 in FY 2008 appropriations was provided for HUD to produce translated documents for those with limited English proficiency. HUD has used these funds to begin translating vital agency documents, such as the multifamily model leases.

NAHMA continues to work on this important issue with the 111th Congress. The FY 2009 Consolidated Appropriations Act (H.R. 1105) includes \$500,000 for HUD to continue providing LEP services and translations. NAHMA strongly supports this funding. Additionally, we anticipate that LEP authorization language will be reintroduced as part of a new Section Eight Voucher Reform Act.

NAHMA is asking members of Congress to:

- **Support the \$500,000 designated for LEP translations in the FY 2009 omnibus appropriations bill (HR 1105); and**
- **Support authorization language as part of a SEVRA bill and/or free standing legislation which will:**
 - **Create an LEP stakeholder taskforce;**
 - **Require HUD to translate the vital documents within six months;**
 - **Create a HUD-administered 1-800 hotline to assist with oral interpretation needs; and**
 - **Authorize appropriations.**

9. Obtaining clarity and consistency in application of HUD's Previous Participation Certification process.

The purpose of the Previous Participation Certification process (also known as the 2530 process) is to ensure that prospective participants in HUD's multifamily housing programs have a history of carrying out their past financial, legal, and administrative obligations in a satisfactory and timely manner. The current system requires HUD's business partners that want to participate in multifamily housing programs to submit Previous Participation Certifications every time they wish to do business with HUD. HUD analyzes the applicant's record to ensure it reflects an acceptable risk to the public interest. This process is extremely important to property owners and management agents, because failure to receive approval of their certifications from HUD precludes them from taking on new HUD-related property ownership or management opportunities.

HUD requires previous participation certifications to be submitted electronically through its Active Partners Performance System (APPS), although an option to submit paper 2530 certification forms still exists in the short-term (until HUD submits a revised 2530 regulation for congressional review). APPS allows HUD's business partners to manage their company and individual participation information and to submit electronic certifications to HUD via the Internet. The system also allows owners and management agents to see "flags" placed on their records for regulatory noncompliance.

NAHMA members report problems with both the policy and technical aspects of this process, including:

- Excessive processing time (often more than a month) on HUD's part;
- Lack of transparency in policy and procedures;
- Inconsistency among field offices on flag placement, flag removal and certification processing;
- Need for additional APPS training for HUD field staff; and
- Inaccurate information in HUD databases.

By far, the most common previous participation complaints NAHMA hears from property owners and management agents involve flags. Our members report considerable difficulty in having flags removed, even after the noncompliance event has been cured. A major source of frustration is caused by one field office placing a flag on a property which prevents a company from acquiring new business in another HUD field office jurisdiction. Proceedings will be stopped, and the certification will be returned to applicant. The applicant will then have to resubmit, deal with the different field offices and will often need to involve HUD headquarters. This is time consuming, administratively burdensome, and jeopardizes new business for the company. "Inherited flags" are also difficult to remove. For example, when a new management company takes over a property, it may inherit the flags for the property which resulted from the previous management's actions. Also, flags associated with dead people and former employees continue to show up, even after the management agent updates the 2530 information to remove the deceased or a former employee. It is particularly frustrating to agents with very large portfolios that a single flag on a property can jeopardize new business for a company that manages hundreds of other properties with good management reviews and REAC scores. These agents feel they are unfairly stigmatized by a flag that does not reflect the true quality of their management portfolios.

NAHMA members feel strongly that these factors cause unreasonable and unnecessary delays in 2530 processing. Prompt turn-around is essential since agents will lose business if the process drags out.

We believe these problems can be solved. We request that:

- **The new HUD leadership place a high priority on publishing a workable, updated revision of the previous participation regulations.** We believe transparent regulations can eliminate many inconsistencies among field offices in processing certifications and removing flags;
- **HUD schedule regular meetings with industry stakeholders to identify technical difficulties as well as areas of possible improvement to make the APPS system more user-friendly; and**

- **Appropriate congressional committees schedule oversight hearings to examine HUD's previous participation certification process.** We recommend exploring the reasons why HUD has not submitted a workable, updated revision of the previous participation regulations and examining what is being done to correct the numerous complaints from affordable housing providers about the current process; and
- **If HUD is unable or unwilling to make necessary corrections to its previous participation policies, we request legislation to update these procedures.**

10. Obtaining clarity and consistency in REAC inspections, protocol and scoring.

Located within HUD's Office of Public and Indian Housing, the Real Estate Assessment Center (REAC) is responsible for assessing the physical and financial condition of all public housing and multifamily housing projects assisted by the Department. REAC conducts a program of annual physical inspections of public and assisted multifamily housing. It also analyzes financial reports submitted by public and assisted multifamily housing to assess their financial health. Essentially, REAC's job is to verify that residents in public and assisted multifamily housing are living in safe properties which comply with HUD financial regulations.

Overall, NAHMA believes REAC has been successful as an independent evaluation tool for the HUD portfolio. The most recent physical inspection scores confirm that the majority of HUD's multifamily inventory is in good condition.

However, NAHMA believes there is room to improve the inspection process. **We are requesting a congressional oversight hearing on REAC and we are seeking legislative changes to improve the existing REAC inspection process.** We hope that the REAC Inspection Improvement Act, which we expect to be introduced by Rep. Yvette Clarke, will include NAHMA's recommendations in the following areas.

- **Improving the predictability in scheduling of inspections.** Often, properties and tenants are only given a few days to prepare for the inspection, which can last multiple days. Our recommendations elaborate on language requiring REAC to set a mutually agreeable inspection date with the owner or property agent. Owners and management agents are not always allowed to reschedule when emergencies occur or rehabilitation is underway.
- **Providing much needed transparency and consistency in REAC policies.** Management agents and owners have become incredibly frustrated by the inability of HUD's Office of Housing and REAC to find consensus on policies that affect REAC scoring. Similarly, policy directives from the Office of Housing are sent to REAC and not shared with property owners and agents, resulting in further confusion about the owner/agents' rights, responsibilities and how to remain in compliance. NAHMA believes the Office of Management and Budget's "Final Bulletin for Agency Good Guidance Practices" provides a useful framework that HUD's Office of Housing, Office of Public and Indian Housing, and REAC should use as the *minimum* requirements for agency transparency. Many REAC policies that affect regulatory compliance will fall below the \$100 million economic impact threshold. Similarly, internal agency communications, which transmit policy interpretations that affect regulatory compliance, should be publicly disclosed. Going forward, procedures must be developed to inform the industry more quickly about policy changes which affect the owner/agent's ability to do their job of keeping properties in compliance.
- **Streamlining the inspection and appeals processes.** Appealing a REAC score can be time consuming and labor intensive. NAHMA members report that their properties continue to be cited in REAC inspections for deficiencies that were successfully appealed. NAHMA recommends requiring REAC to make a permanent correction in its records when an owner or PHA has successfully appealed a database adjustment request so that the non-deficiency is no longer cited and will not affect the score.
- **Minimizing the burden of the inspection process on owners, management agents, and residents.** The property owner or his agent is required to accompany the REAC inspector during the inspection. We are seeking language requiring inspectors to make their best efforts to complete inspections in one business day and during the property's normal business hours. Since a sample of tenants' apartments will also be inspected, NAHMA believes REAC should be required to schedule the inspection on a day that allows at least 14 days advanced notice to the residents.

- **Offering greater assurance of professional, qualified REAC inspectors.** REAC inspectors are contractors who act on behalf of HUD. HUD awards inspection contracts competitively through its reverse auction process. We believe it is in the best interest of the Department, the affordable properties and the residents to have knowledgeable, professional inspectors. For these reasons, NAHMA is requesting stricter conflict of interest standards for inspectors and increased minimum insurance coverage requirements. Because there have been instances where REAC inspectors have caused significant damage to HUD-assisted properties (e.g. left a gas burner on and caused a fire), our proposal asks for a requirement that all REAC inspectors must produce a certificate of insurance naming the property as a named insured, upon request of the property owner or agent. This requirement is necessary to protect HUD-assisted properties from having to absorb expenses for damage caused by a contractor acting on HUD's behalf.

- **Allowing for a more accurate reflection of the property's condition in the REAC score.** NAHMA strongly believes there is room for common sense in the inspection process. Many owners and agents recall instances where points were deducted on their REAC scores for deficiencies that were being repaired while the inspection was underway. One of our proposed changes would require inspectors to include written observations for cited deficiencies and to indicate if active repairs were underway during the inspection.