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Regulations Division  
Office of General Counsel  
Department of Housing and Urban Development  
Room 10276  
451 7th Street SW  
Washington, DC 20410-0500

**RE: Supportive Housing and Services for the Elderly and Persons With Disabilities:  
Implementing Statutory Reforms- Reopening of Public Comment  
[Docket No. FR-5576-N-02]**

The National Affordable Housing Management Association (NAHMA) appreciates the opportunity to comment on this important proposed rule. NAHMA is the leading voice for affordable housing management, advocating on behalf of multifamily property managers and owners whose mission is to provide quality affordable housing. NAHMA supports legislative and regulatory policy that promotes the development and preservation of decent and safe affordable housing, is a vital resource for technical education and information and fosters strategic relations between government and industry. Founded in 1990, NAHMA's membership today includes the industry's most distinguished multifamily owners and management companies.

Our detailed comments follow.

**I. Executive Summary**

*Page 60591, C. Costs and Benefits:* HUD's Regulatory Impact Analysis assumes that owner paid utilities will be reduced 20 percent in the ePRAC program, but it does not elaborate on the basis for that assumption. HUD also acknowledges, "...the actual savings will depend upon the number of [ePRAC] applications submitted for which HUD concludes the debt service would result in ongoing operating costs savings in an amount greater than the cost of the debt." It would be helpful if HUD were to highlight some of the underpinnings for this assumption in this rule. NAHMA is concerned that the cost savings from energy efficiency improvements may be insufficient to pay for the debt service.

**III. This Proposed Rule - Overview**

*Page 60596, Requirements (891.190(b)):* There is an error in the next to last sentence in the first paragraph of the first column. It reads, "These contracts [ePRAC] provide for the inclusion

of debt service as an under eligible expenses, the of debt service for housing units covered by an ePRAC." (Ambiguity underlined.)

*Page 60605, Responsibilities of the Owner (891.912(c)):* The discussion of submission of audited financial statements makes no distinctions as to size of the federal award and actually departs from recent regulatory relief granted for small projects.

*Page 60607, Default by Owner (891.914):* NAHMA recommends adding a brief discussion of owner's rights to appeal.

*Page 60612, Additional Project Eligibility (892.315):* Please clarify whether the last sentence of this paragraph, "HUD may not provide grants under this section for more than three such properties," pertains to the whole program or to just the projects of an affiliated owner.

*Page 60612, Other Federal Requirements (892.310):* NAHMA has heard concerns that requiring Davis Bacon wages for properties with only 12 assisted units may suppress participation in the Assisted Living Conversion program. At the minimum, we urge HUD to provide an exception for emergency repairs.

## **The Proposed Regulatory Language**

### **Part 891-Supportive Housing for the Elderly and Persons with Disabilities**

#### **§ 891.150 Operating cost standards**

*Page 60615, § 891.150(b):* HUD's operating cost standards for PRACs should be geographically based. The language suggests that the standards are tied to HUD field offices, and it is unclear how the reorganization efforts will affect implementation of these standards. Will there be only one standard for the whole region after the multifamily transformation is completed?

#### **§ 891.155 Other federal requirements**

*Page 60616, § 891.155(d)(1):* Imposition of Davis Bacon on the basis of unit number (12 or more) rather than size of the construction or repair contract is illogical, and as a practical matter, may serve to suppress participation in the program due to increased costs. Additionally, there does not appear to be any allowance made for emergency repairs.

#### **§ 891.175 Technical assistance**

*Page 60616, § 891.175:* There seems to be an inconsistency between (b)(1)(ii) - requiring the applicant to have site control - and (b)(2) which permits such grants to be used for initial costs related to site control, among other uses.

#### **§ 891.190. Enhanced project rental assistance contracts (ePRACs)**

*Page 60616, § 891.190 (b)(1):* "Eligible applicants" should include non-profit general partners, not just non-profits. Under the Low Income Housing Tax Credit, the ownership entity includes a

not-for-profit general partner, so this change will allow LIHTC properties to utilize ePRAC to refinance. Without adding non-profit general partners to the list of eligible applicants, new construction of affordable housing—which is now primarily financed under the LIHTC—is excluded from this program.

*Page 60616, § 891.190(b)(4):* Please explain the rationale for restricting vacancy payments to only 80 percent of operating expenses rather than 100 percent. NAHMA urges HUD to reconsider this provision.

*Page 60616, § 891.190(b)(5):* The proposed regulation states, “HUD may retain a percentage of the ongoing operating cost savings. HUD will advise of the percentage of savings to be retained through notice.” Depending on the amount of cost savings HUD retains, owners’ ability to cover debt service may be affected. HUD should publish this notice in the *Federal Register*, and its decision making process on this matter should be transparent.

### **§ 891.205 Definitions**

*Page 60616, § 891.205:* The definition of “Activities of Daily Living (ADL)” includes paragraph 6, which reads, “Other such activities as HUD deems essential for maintaining independent living.” NAHMA is concerned that HUD lacks the necessary medical expertise to make such determinations. We urge the Department to revise this language.

*Page 60617, § 891.205:* The definition of “Instrumental Activities of Daily Living” includes the clause, “or other such activities as HUD deems essential for maintaining independent living.” NAHMA is concerned that HUD lacks the necessary medical expertise to make such determinations. We urge the Department to revise this language.

### **§ 891.225 Provision of Services**

*Page 60617, § 891.225(b)(3):* HUD should clarify that the employment of a service coordinator (and his / her salary) is still an eligible service cost under the contract for project rental assistance, and that \$15 per unit per month (or more) can be used for such purposes. NAHMA also recommends clarifying how HUD arrived at the service costs cap of \$15 PUPM, and ensuring it will be increased for inflation.

### **§ 891.308 Cost Limits**

*Page 60617, § 891.308(b)(2)(ii):* If the owner is proposing to set aside units for frail seniors, there should be a formula to incorporate common areas and to waive the 110% of the applicable HOME Investment Partnership program cost limitation. Sponsors report needing more “program areas” to allow frail residents to age in place.

### **§ 891.335 Conversions**

*Page 60618, § 891.335(b):* Why is it necessary for HUD to reserve the right to request a change in management if all of the pre-requisites set forth in (a)(1)-(3) have been satisfied, including a determination by the relevant state agency that the need for such housing no longer exists? NAHMA cautions against assuming that bad management is responsible for the factors which trigger the need for conversions.

## **§ 891.410 Determination of eligibility and selection of tenants**

*Page 60618, § 891.410(c)(3)(ii):* The written documentation evidencing the functional limitations should include language that the individual making such a determination is certifying as to the elderly individuals' limitations and is doing so under penalty of perjury. NAHMA urges HUD to create an official certification form which would include such language.

## **Subpart E - Loans for Housing for the Elderly and Persons with Disabilities**

### **§ 891.530 Prepayment privileges**

*Page 60619-20, § 891.530(e)(1) and (e)(6)(ii):* What is the basis for restricting loan proceeds to no more than 15% of the cost for increasing the availability or provision of supportive services? NAHMA believes this limitation should be allowed to increase over time as costs may rise. We offer the same comments for the development cost limitations at 891.530(e)(6)(ii).

## **Subpart G-§ 811 Project Rental Assistance Program**

### **§ 891.872 Definitions**

*Page 60621, § 891.872:* Under the definition of "Eligible applicant," it is unclear how HUD will determine whether a state agency that allocates Low Income Housing Tax Credits is "in good standing...in its administration of assistance." Please clarify or revise this part of the definition.

### **§ 891.880 Terms and conditions of project rental assistance financing**

*Page 60622, § 891.880(c) and (d):* There is a disconnect between the initial 20-year term of the rental assistance contract (RAC) and the 30-year minimum term of the use agreement. The terms of the RAC and the use agreement should be the same.

## **Subpart H – Senior Preservation Rental Assistance**

### **§ 891.905 Project Rents**

*Page 60625, § 891.905(a)(2):* Please clarify what is meant by "a reasonable percentage of the fair market rents, as defined by HUD." Why not just use fair market rents? SPRAC rents must be set at a level that will allow the property to remain viable. If rents are set too low, interest in the program will be thwarted because the program will be financially infeasible.

### **§ 891.908 Distributions and replacement reserves**

*Page 60625, § 891.908(a)(4):* Regarding the HUD determination that project funds exceed the amount needed for operations, etc., and may be placed in a residual receipt account to reduce SPRAC payments, HUD should clarify what its determination process will involve so that owners are not caught with project shortfalls in the future due to perceived overages in the past. Please also clarify whether this section applies to projects that are not subject to distribution limitations (per 891.908(a)(2)(ii)).

Page 60625, § 891.908(b)(1)(i) and (ii): If HUD changes the replacement reserve deposit percentage, it should do so in a transparent manner (both in terms of the justification for the higher percentage and publication of the same in the *Federal Register*). We offer the same comment for the requirement at (b)(1)(ii) - the reserve level determined by HUD must be sufficient to meet projected requirements.

### **§ 891.910 Leasing to eligible families**

*Page 60626, § 891.910(b)(2):* The broad authority of HUD to reduce the number of units covered by SPRAC is too broad and vague, especially as it would be "notwithstanding any prior approval by HUD...."

### **§ 891.912 Applicability of other Part 891 regulations**

*Page 60626, § 891.912(c):* Among the owner's obligations is the responsibility to submit audited financial statements. However, the proposed rule makes no distinction as to size of the federal award, and actually departs from recent regulatory relief granted for small projects.

### **§ 891.922 Labor Standards**

*Page 60627, § 891.922:* NAHMA previously raised concerns about triggering Davis Bacon requirements when a property has only 12 assisted units. For SPRAC, the trigger is dropped to nine units. While we believe 12 units is still too low, it is preferable to nine. The trigger for SPRAC should also be raised to at least 12 assisted units. Additionally, exceptions should be provided for emergency repairs.

## **Part 892 – Service Coordinator in Multifamily Housing and Assisted Living Conversion Programs**

### **Subpart A – General Program Requirements**

#### **§ 892.105 Definitions**

Page 60627 § 892.105: NAHMA urges HUD to add the following to the definition of "Eligible housing project" so that the LIHTC and SPRAC properties may participate in the service coordinator program:

- a. Housing financed by Low Income Housing Tax Credit funds with a for-profit entity where the General Partner of the Limited Partnership will be controlled by a non-profit (as part of the tax credit program)
- b. Housing financed by SPRAC, which allows SPRAC projects to use ALCP funds.

Having a service coordinator in LIHTC properties with Section 8 rental assistance would allow residents to age in place in those communities.

*Page 60628, § 892.105:* Please revise the definition of "Supportive Services." NAHMA is concerned that HUD does not have the necessary medical expertise to determine "...other such activities...essential for maintaining independent living.

*Page 60628, § 892.105:* "Vicinity of the housing project" includes some incredibly vague and undefined terms such as "close enough" and "easy access". More clarity on these terms would be helpful.

## **Subpart B-Service Coordinator in Multifamily Housing Program**

### **§ 892.220 Duties**

*Page 60629, § 892.220(a)(12):* Please clarify whether the "your" and "you" references in the proposed rule pertain to the service coordinators or owner.

## **Subpart C – Assisted Living Conversion Program**

### **§ 892.305 Definitions**

*Page 60630 § 892.305:* NAHMA recommends adding the following to the definition of "Eligible project":

- a) Housing financed by Low Income Housing Tax Credit funds with a for-profit entity where the General Partner of the Limited Partnership will be controlled by a non-profit (as part of the tax credit program)
- b) Housing financed by SPRAC,

These changes are important. The first change is critical to ensure financing can be obtained to not only convert communities under the ALCP program, but also to bring additional tax credit financing to preserve and rehab the entire building. The second change allows SPRAC projects to use ALCP funds.

*Page 60631 § 892.305:* In order to be consistent with HUD's intent that the ALCP include conversion to service-enriched housing in addition to licensed assisted living, the definition of "Conversion" should be changed to: "Conversion means activities in an eligible project designed to convert dwelling units into assisted living facilities or service-enriched housing."

*Page 60631 § 892.305:* Under paragraph (3) in the definition of "service-enriched housing," NAHMA urges HUD to consider waiving the requirement to have a full kitchen for projects built under the HUD 236 program. Some of these projects do not have the kitchen already included, and the rehabilitation costs are too great for these projects to participate in the ALCP program.

### **§ 892.310 Other Federal requirements**

*Page 60631, § 892.310(e):* Once again, NAHMA members have expressed concerns that the trigger for Davis Bacon wages (12 assisted units) is too low, and there is no exception for emergency repairs. As a practical matter this may suppress participation in the ALCP program.

*Page 60631, § 892.310(f):* The proposed language addresses minimizing displacement of "persons." As written, "persons" include families, individuals, business, nonprofit organizations and farms. This seems overly broad, and we request clarification of this section.

### **§ 892.315 Additional project eligibility**

Page 60632, § 892.315(c): The wording of this sentence is a bit ambiguous. Does it mean that HUD may only fund three projects total across the whole program, or does this restriction only pertain to the projects of affiliated owners?

### **§ 892.335 Vacancy payment**

Page 60632, § 892.335: In order to provide clarity to providers and developers, § 892.335 should limit vacancy payments to “30 days after licensure of an assisted living facility or operational date of service-enriched housing.”

Thank you in advance for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris Cook".

Kris Cook, CAE  
Executive Director