



400 North Columbus Street
Suite 203
Alexandria, VA 22314
(703) 683-8630
(703) 683-8634 FAX
www.nahma.org

February 4, 2013

Branch Chief
Regulations and Paperwork Management Branch
U.S. Department of Agriculture
STOP 0742
1400 Independence Avenue SW.
Washington, DC 20250-0742
<http://www.regulations.gov>

RE: Civil Monetary Penalties, Proposed Rule
FR DOC # 2012-31712
RIN 0575AC93

Thank you for the opportunity to comment on the two civil monetary penalties proposed by the United States Department of Agriculture - Rural Housing Service (RHS).

RHS specifically proposed amending its rules to incorporate authority under Section 543 of the Housing Act of 1949, as amended (Housing Act CMP) and the Program Fraud Civil Remedies Act of 1986 (PFCRA) to implement civil monetary penalties (CMPs). Programs covered under the proposed rule include Section 514 & 516 Farm Labor Housing Programs, Section 515 Rural Rental Housing Loans, Section 521 Rental Assistance Program and the Section 542 Rural Housing Voucher Program.

Under the framework outlined in the RHS' proposed rule, CMPs could be imposed against *any individual or entity* who knowingly and materially violates or participates in the violation of program requirements or program agreements. Included in the list of individuals or entities subject to the penalties are owners, officers, directors, general partners, limited partners and even *employees*. Some examples of violations for which the Agency may pursue CMPs, are:

- ☐ Submitting false information to the Secretary;
- ☐ Providing the Secretary false certifications;
- ☐ Failing to submit information requested by the Secretary in a timely manner;
- ☐ Failing to comply with the provisions of applicable civil rights statutes and regulations;
- ☐ Failing to maintain the property subject to loans made or guaranteed in good repair and condition, as determined by the Secretary; and
- ☐ Failing to provide acceptable management for a project which received a loan made or guaranteed under the Act that is acceptable to the Secretary.

After thoroughly reviewing this proposed rule, NAHMA cannot support it in its current form. NAHMA understands that CMP are a regulatory tool available to federal agencies. We do not object to RHS' goal of updating its rules for implementing CMPs per se. In this case, however, the proposed rule is too broad. It completely fails to define the number and scope of penalties. The examples of covered actions subject to CMPs are not all-inclusive. Likewise, a reasonable person cannot determine exactly *which* individuals

PROTECTING THE INTERESTS OF AFFORDABLE HOUSING PROPERTY MANAGERS AND OWNERS

and/or entities RHS would pursue CMPs against *for specific violations*. NAHMA members who participate in the covered programs offered this feedback:

- ☐ “The way it's currently written they could start charging for late certs [certifications] or missing documents;”
- ☐ “Are all employees associated with a property going to be penalized when a property is not maintained to RD's standards...?” and
- ☐ “...how far RD is going to go with this...?”

Members are extremely concerned that the proposal fails to recognize the difficulty of maintaining properties in the absence of adequate resources. They are deeply troubled by the prospect of facing CMPs related to the physical or financial condition of properties for which RHS has denied rent increases or additional rental assistance necessary to improve the properties.

The proposed rule does give considerable thought to due process procedures for the individual and entity respondents. We agree that notification procedures and the right to request a hearing with the USDA Office of Administrative Law Judges are appropriate administrative mechanisms.

Nevertheless, NAHMA believes it is imperative for RHS to more clearly limit and define the scope of this proposed rule. We strongly urge RHS to produce an itemized list of actions for which the Agencies will seek CMPs, the scope and amount of those penalties and who will be subject to them. This list should be released for public comment prior to finalizing the CMP rule. Finally, this list should be included in RHS' final rule.

Thank you for your consideration.

Sincerely,

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

Kris Cook, CAE
Executive Director