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May 20, 2011

Ms. Julie Hetrick  
Office of Budget and Program Analysis,  
USDA, Jamie L. Whitten Building, Room  
101-A, 1400 Independence Ave., SW.  
Washington, DC 20250

**RE: Reducing Regulatory Burden: Retrospective Review Under E.O. 13563**

Dear Ms. Hetrick,

Thank you for this opportunity to comment on ways to make the Department of Agriculture's (USDA) regulations more effective and less burdensome. NAHMA applauds the Administration's initiative to update existing rules and to develop an on-going process for evaluating regulations.

In its April 20 *Federal Register* notice, USDA requested feedback on five questions intended to help the Department prioritize which regulations should be reviewed, which should be improved, and which should be eliminated altogether. NAHMA's comments will answer these questions as they apply to USDA-Rural Development's (RD) multifamily rental assistance programs.

NAHMA is a trade association whose mission is to promote the development and preservation of quality affordable multifamily housing by advancing legislative and regulatory policy, and preparing affordable housing professionals to succeed in evolving economic and political environments. NAHMA's members are property owners and managers, industry stakeholders, and providers of goods and services to the affordable housing industry. Our members have considerable experience with the following federal housing programs:

- Section 515 Rural Housing;
- Section 521 Rural Rental Assistance;
- Section 538 Guaranteed Loans;
- The Multifamily Housing Revitalization Program;
- Project-based Section 8 (administered by HUD);
- Section 202 housing for the elderly (administered by HUD);
- Section 811 housing for the disabled (administered by HUD);
- Section 8 Housing Choice Voucher program (administered by HUD); and
- The Low Income Housing Tax Credit (administered by Treasury-IRS).

NAHMA's comments on reducing regulatory burdens will primarily focus on the multifamily housing programs administered by USDA's RD office. NAHMA members believe it is imperative for USDA to examine several outdated and burdensome regulations that affect the operation and financial solvency of rural multifamily properties. Our responses to USDA's inquiry are based on feedback from management agents and owners who have direct experience operating properties subject to USDA-RD regulations.

NAHMA urges USDA-RD to use this review as an opportunity to:

- Provide additional flexibility in the regulations to deal with economic and operational realities associated with rural housing;
- Discourage excessive focus over the processes owners and management agents must use to demonstrate regulatory compliance;
- Place an emphasis on the “reduction” component of the Paperwork Reduction Act as it applies to multifamily forms and information collections; and
- Keep its regulations current, easy to understand, and fully transparent.

Our specific recommendations are explained in detail.

**(1) Are there regulations or reporting requirements that have become outdated and, if so, how can they be modernized to accomplish their regulatory objectives better?**

NAHMA’s comments will focus on outdated regulations that deal with income waivers to fill outstanding vacancies and penalties for late tenant certifications.

*Vacancies*

Many rural multifamily properties that receive government assistance were underwritten with vacancy levels of 3 to 5 percent. However, economic realities have negatively affected populations in rural areas. Many prospective tenants who have seen their incomes reduced or lost their jobs can not afford to live in affordable rural housing without some form of rental assistance—rural rental assistance, HUD’s project-based Section 8, or a HUD Section 8 housing choice voucher. Disabled or elderly households also have trouble affording rents in RD supported properties without some sort of rental assistance. Oftentimes, those who lose their jobs will leave rural areas for more metropolitan cities in hopes of finding new employment.

NAHMA believes properties with vacancies which exceed five percent for at least three consecutive years face serious financial challenges. If the vacancy rate reaches 10 percent, the property is in serious financial trouble. High vacancy levels are financially unsustainable and reduce the funding available for property operations and upkeep. NAHMA believes that USDA-RD can help increase property occupancy by requesting Congress provide additional flexibility in the statute (42 U.S.C. 1485) and by revising its outdated tenant eligibility requirements (7 CFR 3560.152) and assigning rental assistance (7 CFR 3560.257) regulations.

***7 CFR 3560.152 Tenant Eligibility Requirements (d) Ineligible Tenant Waiver***

The ineligible tenant waiver provided by 7 CFR 3560.152 (d) offers a temporary solution to properties’ vacancy problems; however, NAHMA members report the waivers are very difficult to obtain from RD field offices. Our members have said RD field offices will only approve ineligible tenant waivers for properties experiencing vacancy rates of 25 percent or more. In addition, the waiver may only be used for one year.

USDA-RD staff has told us the Department closely restricts the waivers for ineligible tenants due to statutory language (42 U.S.C. 1485) that limits assistance for USDA-RD’s direct loan programs to very low, low, and moderate-income tenants. The waivers are only intended as a short-term remedy; they are not intended to be used to ensure the long-term financial solvency of the property.

NAHMA believes that a long-term vacancy issue exists when a property is experiencing five percent or more vacancy for three years or longer. We would encourage USDA-RD to revise the regulation to provide as much flexibility for the income ineligibility waiver as possible under the statute (42 U.S.C. 1485), and ask

Congress to provide a statutory change that would allow income ineligibility waivers for properties with demonstrated long-term vacancy problems.

### ***7 CFR 3560.257 Assigning Rental Assistance***

Under this regulation, USDA-RD provides rental assistance to qualified existing residents first and then qualified households on the property waiting list, regardless of the severity of the need. Although this rule is well-intentioned, NAHMA members have found this regulation can work against increasing occupancy rates in rural buildings.

Often, there are tenants on the waiting list who cannot afford rents at a rural property without some form of rental assistance. When rental assistance becomes available, the rule requires that existing residents who may qualify as rent burdened receive the assistance, even if there is a family on the waiting list with a greater financial need. Our members believe this is a missed opportunity to increase the number of very-low income households in rural properties while addressing vacancy problems. NAHMA would urge USDA-RD to re-evaluate the current preference system for rental assistance as an option to help reduce the number of outstanding vacancies at rural properties.

### ***Late Tenant Certifications***

### ***7 CFR 3560.702 Unauthorized Assistance Sources and Situations***

### ***7 CFR 3560.705 Recapture of Unauthorized Assistance***

USDA-RD regulations allow the recapture of unauthorized assistance, when the assistance was obtained due to inaccurate, incomplete, or fraudulent information, regardless of whether the resident or management agent provided it. Managers affiliated with NAHMA report instances in which they had to return their management fees to USDA-RD when tenant certifications were late because of tenant noncompliance. Even though these managers made good faith efforts to get the tenant to comply with the certification requirements and maintained documentation demonstrating their efforts, they were required to forfeit management agent fees because tenants did not complete the tenant certification forms. We would strongly urge USDA-RD to provide more flexibility in the regulations to avoid penalizing management agents that try in good faith to provide a completed tenant certification.

## **(2) Do agencies currently collect information that they do not need or use effectively to achieve regulatory objectives?**

NAHMA's comments will discuss eliminating the borrower certification within the annual financial reports to USDA-RD, as it is redundant.

### ***7 CFR 3560.308 Annual Financial Reports [USDA Rural Housing Handbook 2-3650 Section 5 Paragraph 4.32 C, Attachment 4-C]***

The borrower's certification, which rural property owners and agents must complete at the year end, is redundant and creates an unnecessary administrative burden. All of the information provided by this certification is also available in the annual property audit, which must be submitted to USDA-RD via the MINC system. NAHMA would recommend doing away with this duplicative requirement.

## **(3) Is there information that agencies should begin collecting to achieve regulatory objectives?**

We would encourage USDA-RD to analyze existing vacancy data, available through the monthly project worksheets on the MINC system. We believe further analysis would provide additional information on the

trends and locations of the vacancies, which would help RD understand the extent of the growing vacancy problem and develop additional tools to address this issue.

**(4) Are there regulations, reporting requirements, or regulatory submission or application processes that are unnecessarily complicated, or that could be streamlined to achieve regulatory objectives in ways that are more efficient?**

USDA-RD, the Department of Housing and Urban Development (HUD), and NAHMA participate in the White House's Rental Housing Harmonization Group, an effort dedicated to identifying opportunities to streamline regulatory and statutory conflicts between the Federal government's housing programs. NAHMA believes that streamlining USDA-RD's tenant certification and verification regulations with those issued by HUD would help the agencies move closer to the goals established by the harmonization group.

***7 CFR 3560.152 Tenant Eligibility Requirements (e) Tenant Certification and Verification***

The regulation requires a full recertification of a tenant household every time their household income changes \$100 or more per month. NAHMA members report that the regulation results in a tremendous amount of work for site staff and residents alike. Owners and agents must perform three to four full recertifications for some households over the course of a year. NAHMA encourages USDA-RD to streamline the regulation with HUD's tenant certification and verification policies, which require one full recertification annually and an interim certification whenever a family's income changes by \$200 or more in a month or when the family requests the interim certification.

**(5) Are there regulations, submission and application processes, or reporting requirements that have been overtaken by technological developments? Can new technologies be used to modify, streamline, or do away with existing regulatory or reporting requirements?**

NAHMA's comments will discuss our recommendations for overcoming the challenges owners and agents face when certifying tenants' incomes in rural multifamily housing programs. Specifically, we urge USDA to request a statutory change which would permit the use of the Enterprise Income Verification (EIV) System for income verification in RD's multifamily housing programs.

***7 CFR 3560.153 Calculation of Household Income and Assets***

***24 CFR 5.609 Annual Income***

***24 CFR 5.611 Adjusted Income***

While USDA-RD and HUD both use the same regulations to calculate annual and adjusted income, the EIV system may only be used for income verification in HUD's rental assistance programs. The Enterprise Income Verification System (EIV) is HUD's web-based, independent third-party income verification source. The EIV system shares income data in other federal databases with public housing authorities, as well as owners, management agents and contract administrators of privately-owned assisted multifamily properties. The information HUD makes available in EIV includes monthly Social Security (SS) and Supplemental Security Income (SSI) benefits data from the Social Security Administration (SSA), as well as monthly employer new hires (W-4), quarterly wage for federal and non-federal employees, and quarterly unemployment data from the Department of Health and Human Services' (HHS') National Directory of New Hires (NDNH). Such income would be untraceable if the tenant did not voluntarily report it.

Only Section 515 properties that receive project-based Section 8 assistance may access the EIV system. No other rural housing program may use it because USDA is not a party to the computer matching agreements with HHS and SSA. The computer matching agreements are governed by the Privacy Act and the Social Security Act. Statutory changes, similar to the provisions included in the FY 2004 Consolidated Appropriations bill are necessary for USDA to join the agreements.

PROTECTING THE INTERESTS OF AFFORDABLE HOUSING PROPERTY MANAGERS AND OWNERS

Access to the EIV system would allow rural housing providers to check reported income against Social Security (SS), Supplemental Security Income (SSI), new hires (W-4), and wage and unemployment compensation records, ensuring the right benefits go to the right people. The current third-party income verification used by owners and agents of rural multifamily properties may miss unreported income due to incomplete or inaccurate information, which could result in an improper subsidy payment to the tenant.

In addition, access to the system would also streamline income certification regulations and reporting requirements between multiple affordable housing programs. Even in a Section 515/8 property, the EIV information obtained to verify income for the Section 8 assistance cannot be shared with RD program staff. Owners and agents must keep separate files for the same tenant that can be reviewed for Section 8 compliance and for Section 515 compliance.

In order to reduce improper payments—as President Obama has asked agencies to do in Executive Order 13520, Reducing Improper Payments and Eliminating Waste in Federal Programs—and streamline existing HUD and RD income certification regulations, NAHMA urges USDA-RD to request the statutory authority necessary to access the Enterprise Income Verification (EIV) System from Congress.

## **Conclusion**

NAHMA commends USDA for undertaking this important review. Our comments are not exhaustive, but they do represent a strong consensus about the most important regulatory concerns among our members. NAHMA will continue to work with USDA-RD to resolve the growing vacancy problems in rural communities and streamline the regulatory and statutory differences between USDA-RD and HUD's affordable housing programs. We look forward to continuing our partnership with the Department to strike the appropriate balance between common sense and appropriate regulatory oversight of federal programs.

Sincerely,

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

Kris Cook, CAE  
Executive Director