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**Comments on the Rental Policy Working Group Alignment Reports
Submitted by the National Affordable Housing Management Association (NAHMA)
c/o harmonization@hud.gov**

To Whom It May Concern:

Thank you for this opportunity to comment on the White House's "Rental Policy Working Group Federal Rental Alignment Opportunities -Conceptual Proposals," published July 2011.

The National Affordable Housing Management Association (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 management agents (O/A), industry stakeholders, and providers of goods and services to the affordable housing industry.

In the experience of NAHMA members, it is extremely difficult to develop or preserve affordable apartments without using multiple layers of financing from federal, state, local and private sources. Once the financing is in place and the units are available for rent, it is the property manager's job to ensure the project remains in compliance with all of the various program requirements. Unfortunately, some of the most commonly used programs have conflicting, redundant or obsolete regulations. NAHMA applauds the Rental Policy Working Group (RPWG) for offering preliminary strategies to solve this "Catch-22" situation.

While most of the alignments proposed in the RPWG reports are still in the conceptual or development phase, NAHMA is very encouraged by these early recommendations. We look forward to working with the Administration to move forward with the pilot programs for streamlined physical inspections and subsidy layering reviews. Our comments will focus on the reports for streamlining the multiple physical inspections on "combined funding" properties and bringing more consistency to income definitions and compliance reporting. Nevertheless, we are intrigued by the alignment proposals for standardized financial reporting, implementing common energy efficiency requirements, and increasing access to HUD's APPS database to expedite approvals by USDA-Rural Development. NAHMA remains an interested and enthusiastic partner in the Administration's efforts to further refine these proposals.

NAHMA's comments on specific alignment reports are respectfully submitted.

Physical Inspections

NAHMA strongly agrees with the Physical Inspection Alignment Report statement:

"The solution to reducing the number of physical inspections required by Federal funding sources is to have one periodic and regularly-occurring Federal physical inspection acceptable to all Federal funding sources and the local and State agencies to which appropriate authority has been delegated. In order to achieve this alignment, the Rental Policy Working Group proposes to investigate a common physical

condition inspection standard, a format of inspection results that can be utilized by each Federal funding source, an acceptable inspection frequency, and an acceptable sample size (number of units to be inspected).”

The report describes “combined funding properties” as “those that combine any number of federally-sourced subsidy or tax credit programs, including LIHTC, USDA-RD programs and loan guarantees, as well as HUD programs like FHA insurance, CDBG, HOME, HOPEVI and PBRA [project-based rental assistance] (State and Federal level).” Under the current practices, combined funding properties are subjected to a variety of inspections to satisfy each administering agency. This duplication of effort is not only disruptive to management but also to residents, who must be notified to be ready for a random inspection. NAHMA strongly agrees reducing inspections to “one federally-sponsored visit to each property with standard sampling size, intervals, and inspector qualifications” could realize millions of dollars in annual savings to federal state and local governments as well as private owners, developers, lenders, and other stakeholders.

A pilot program to test the feasibility of streamlining physical inspections on combined funding properties will be conducted in six states (Michigan, Minnesota, Ohio, Oregon, Washington and Wisconsin). The RPWG’s goal is to reduce multiple physical inspections on these properties to one federally-sponsored visit (not less than once every three years) with standard sampling sizes and inspector qualifications. For combined funding properties with Low Income Housing Tax Credits, state housing finance agencies will be designated as the lead inspection agency.

NAHMA respectfully offers the following thoughts on the proposed pilot program:

- The report makes a strong argument for using the Uniform Physical Condition Standards (UPCS) protocol as the common inspection standard for combined funding properties.
- NAHMA believes that a successful alignment will allow inspections results to compare “apples to apples.” Instead of requiring use of the REAC system, the report states alignment could be achieved by either expanding REAC’s use to all UPCS inspections on federally-assisted properties, or by adjusting REAC input methods to allow for non-REAC inspections to be ‘read’ into the system. NAHMA recognizes that REAC, like all evaluation tools, is an imperfect system. Moreover, there will be some transaction costs regardless of whether the REAC system is adapted for use with non-REAC UPCS inspections, whether all UPCS inspections convert to REAC or some combination of these options. Nevertheless, NAHMA believes there is a strong public policy argument in favor of finding a common methodology to conduct and evaluate inspection results for combined-funding properties. We strongly urge the RPWG and participants in the pilot program to continue working toward standardization.
- NAHMA agrees that establishing an inspection frequency of *not less than once every three years* is the appropriate standard. Under REAC, this standard allows HUD to focus limited resources where they are most needed while incentivizing high-performance for assisted properties.
- Although NAHMA is excited about the pilot program, we believe that owners’ participation should be voluntary. State HFAs will take the lead on inspections for combined funding properties with LIHTCs. However, it is not clear how properties will be selected for participation in the pilot, or if owners will have the right to choose whether to participate.
- The RPWG correctly noted that participating properties would need immediate waivers of current regulations. We also strongly agree with the statement, “...if there are other actions taken as a result of using the proposed protocol, the property should be held harmless by the funding agencies while the pilot is active.” For example, HUD must hold properties harmless if the HFA chooses not to use REAC, or if results are not transmitting to HUD in a timely manner by the HFA. Neither the owner nor the management agent should be penalized. Likewise, HUD would have to instruct its performance based contract administrators (PBCAs) on revised procedures for conducting annual management reviews during the pilot, because PBCAs are required to follow-up on deficiencies identified on previous REAC

inspections. Effective communication across agencies and among the various program offices within each agency will be absolutely essential over the course of the pilot.

- NAHMA is concerned about the potential impact of one possible solution offered to address the challenge in selecting a representative sample of assisted units for inspection on combined funding properties. The report suggests HUD, IRS, and USDA could adopt policies “such that a compliance issue found in a statistically valid sample of all federally-assisted units would apply to each assisted unit, regardless of funding source, and thus each agency would be authorized to take enforcement against the units assisted under its program (even if those units were not the actual units inspected).” NAHMA is concerned that if this policy is adopted, owners might be unduly penalized for resident-caused deficiencies beyond their control.
- Finally, NAHMA is concerned by statements in the report which suggest all of the thought and energy invested in the inspection alignment program may only result in “best practice” recommendations. The report specifically states, “Once the results from the pilot program are in hand, a decision will be made whether alignment in these ways for HFAs should be promulgated as recommended best practices or in some stronger fashion.” If standardization is the goal, “best practice” recommendations are extremely unlikely to meet such expectations.

Subsidy Layering Review (SLR)

Seven states (Michigan, Nevada, North Carolina, Ohio, Pennsylvania, South Carolina and Wisconsin), will participate in a pilot program to identify standard procedures for Subsidy Layering Review delegation and information sharing. NAHMA anticipates the pilot’s results will improve transaction completion time and reduce the risk of closing delays.

NAHMA may offer additional comments on the SLR alignment at a later date. In this meantime, we look forward to the pilot’s launch, and we are eager to review the results once it is completed.

Income Reporting and Definitions

The issue statement for this alignment report summarizes common frustrations shared by affordable housing owners and management agents. It reads,

“Various Federal programs to support affordable housing have slightly differing requirements for income certifications and require property managers to submit information on different forms. This may lead to inconsistencies in determinations of income and rents. In addition, property managers and owners sometimes submit income information through different processes. This may lead to inconsistencies and/or add to owners’ or governmental agencies’ administrative burden.”

With respect to the LIHTC program, NAHMA members agree “the absence of cohesive, specific, mandatory Federal guidance means that multi-State developers incur extra costs for, among other items, software and staff training.” Therefore, NAHMA strongly urges the RPWG to pursue alignment of varying definitions of income, as well as ways to reduce State-to-State variability in compliance requirements. We are also intrigued by the concept of a single tenant income form for all Federal programs.

As an example of state-to-state variability in compliance requirements which has frustrated owners, the report states,

“The National Affordable Housing Management Association (NAHMA) developed an open data standard to assist with the computer-to-computer exchange of information required for the LIHTC program. To facilitate access to the standard, NAHMA chose a very widely used format

for its publication—Extensible Markup Language (XML). There appears to have been incomplete acceptance of this standard by the State agencies for which it was designed.”

By way of background, the *State HFA-LIHTC Data Transfer Standard (LIHTC-DTS)* is an open industry data standard which was developed by software vendors, property owners, management agents and state agencies in conjunction with NAHMA. The standard was developed as a compromise in lieu of a common LIHTC tenant income certification form. The XML data standard permits collection of all the different compliance information required by each state agency while creating a simplified, cost-effective solution for property owners and managers who operate in multiple states. The standard is accessible and can be easily obtained at the Multifamily Information and Transactions Standards (MITS) web site www.MITSPROJECT.COM. It is worth noting that this standard is being updated to facilitate the information collection of LIHTC demographic data which is required under the Housing and Economic Recovery Act of 2008. NAHMA believes this data standard is an example of an existing cost-effective LIHTC compliance reporting mechanism which should be required at a national level.

The primary focus of the Rental Harmonization effort is to identify administrative and/or regulatory solutions which will enable federal affordable housing programs to work better when they are combined on the same property. This alignment report, however, also describes solutions which may require statutory changes.

One such item under consideration is grandfathering in-place HUD and USDA-RD tenants whose incomes exceed 60 of Area Median Income when LIHTCs are used to preserve or rehabilitate the property. NAHMA believes these tenants should be grandfathered according to the rules which originally permitted their occupancy.

Another serious conflict which will require a statutory change is the treatment of students under the different federal affordable housing programs. NAHMA strongly urges the RPWG to propose a single occupancy standard for adult student households which would apply across HUD, RD and LIHTC programs. This standard should be carefully balanced to ensure affordable housing is available to families in need while protecting against displacement of low-income residents who need education in order to pursue better employment opportunities.

Financial Reporting

NAHMA may offer detailed comments on this report at a later time. For now, we strongly urge the RPWG to continue exploring ways to achieve necessary financial oversight—particularly for small properties--in the most practical and cost efficient ways.

Common Energy Efficiency Standards

This report recommends promulgating energy efficiency standards for:

1. Newly constructed and ‘gut rehabilitations’ of single family and multifamily rental housing;
2. Newly constructed single family and multifamily rental housing;
3. Substantial or moderate rehabilitation of multifamily rental housing;
4. Lighter retrofits or continuing capital improvements of multifamily rental housing.

NAHMA agrees that promoting energy efficiency in affordable rental properties is an important public policy goal. We share the desire to reduce energy expenses. Cost savings is a relevant measure for evaluating the success of “green” initiatives, but because utility costs can be erratic over time, reduced utility consumption should also be a factor for determining success.

As energy efficiency and capital needs assessment recommendations materialize, NAHMA requests that RPWG proposals ensure:

- New energy efficiency standards do not impose significant administrative burdens and costs to the property owners and agents; and
- The standards and any forthcoming capital needs assessment model are based on proven cost and consumption measures.

Improve Sharing of Data on Owner Defaults

This proposal seeks to expand USDA-RD's access to HUD's Active Partner Participation System (APPS). According to this report, providing RD with direct access to view APPS records would expedite the process for approving participation by owners (and other applicants) who wish to take-on new business in RD programs. Likewise, faster RD approvals would translate into lower private carrying costs.

Preliminary feedback from NAHMA members agrees that greater efficiency in RD's approval process could be achieved if the staff received capability to directly access APPS records. NAHMA urges HUD and RD to give this proposal additional consideration. Of course, the agencies must develop appropriate procedures to ensure participants' privacy and rights are protected.

If RD receives the ability to share its noncompliance records in APPS, HUD and RD should consider whether their compliance requirements must be reassessed to ensure APPS is comparing "apples to apples."

Conclusion

In addition to the recommendations NAHMA offers on specific alignment proposals, we also strongly urge the Administration to use this unique interagency effort to:

- Keep regulations for affordable multifamily housing programs current, easy to understand, and fully transparent;
- Discourage excessive focus over the processes stakeholders must use to demonstrate regulatory compliance; and
- Place an emphasis on the "reduction" component of the Paperwork Reduction Act as it applies to multifamily forms and information collections.

We look forward to continuing our partnership with the Administration to strike the appropriate balance between common sense and appropriate regulatory oversight of federal programs used for affordable housing production and preservation.

Sincerely,



Kris Cook, CAE
Executive Director