

January 29, 2004

Regulations Division
Office of the General Counsel
U.S. Department of Housing and Urban Development
Room 10276
451 Seventh Street, SW
Washington, DC 20410-0500

Re: Mixed-Finance Development for Supportive Housing for the Elderly or Persons with Disabilities and Other Changes to 24 CFR Part 981; Interim Rule [Docket No. FR-4725-I-01]

Dear Sir or Madam:

Thank you for the opportunity to comment on the Department's interim rule regarding mixed-finance development for Supportive Housing for the Elderly or Persons with Disabilities. The National Affordable Housing Management Association (NAHMA) believes with proper implementation, this regulation could offer exciting new development options for affordable housing designed to serve the nation's vulnerable elderly and disabled populations.

NAHMA represents owners and individuals involved with the management of affordable federally regulated multifamily housing developments. NAHMA members provide quality affordable housing to more than two million Americans with very low and moderate incomes. Executives of property management companies, owners of affordable rental housing, public agencies and vendors that serve the affordable housing industry constitute NAHMA's membership. Many of our members are experienced in the development and / or management of Section 202 Supportive Housing for the Elderly, Section 811 Supportive Housing for the Disabled, and Section 42 Low Income Housing Tax Credit properties.

As previously noted, NAHMA is excited about the prospects for mixed-finance development in the Section 202 and Section 811 housing programs. We offer the following general comments in response to HUD's interim rule.

- **NAHMA urges the Department to remain faithful to the congressional intent of the American Homeownership and Economic Opportunity Act of 2000 (AHEO Act, P.L. 106-569).**

This important legislation was intended to increase availability of affordable housing for elderly and disabled families. AHEO facilitates much-needed leveraging of resources

for the Section 202 and Section 811 programs. It invites for-profit limited partnerships to participate in these programs. Likewise, it allows project sponsors to build larger mixed-income developments which can achieve an economy of scale. Ultimately, the goal was to provide additional development options to increase the supply of affordable housing. NAHMA endorsed these concepts in legislative testimony offered before the U.S. Senate Banking Committee Subcommittee on Housing and Transportation on July 18, 2000.

- **At the same time, we strongly urge the Department to allow sufficient flexibility in the final rule to accommodate real-world complexities of layered-subsidy development deals.**

In any affordable housing development deal, uncertainty is a fact of life. There is rarely a “perfect” development deal. In a multi-layered subsidy project, deals are likely to be even more complicated. For this reason, we urge the Department to designate a “point person” at Headquarters who would be responsible for providing clear, consistent, and timely guidance on HUD’s mixed-finance development requirements to field staff and the general public.

The Department has an important oversight responsibility in approving the mixed-finance development deals envisioned by the AHEO Act. However, we respectfully request that HUD remain mindful of the practical challenges developers will face in putting together this type of deal as it exercises its responsibility. Some aspects of the interim rule which we believe require additional regulatory flexibility are outlined below.

- **Additionally, NAHMA recommends a careful review of the comments submitted by the National Leased Housing Association (NLHA) on January 22, 2004.**

NLHA identified several specific areas of concern in the interim rule with which we concur. Of particular interest to NAHMA are provisions identified by NLHA in which the interim rule seems to:

- Exceed statutory requirements (see comments under the for-profit owner section which discuss requiring the nonprofit general partner to be created by the Section 202 or Section 811 sponsor);
- Inhibit the flexibility necessary to form and/or execute a development plan with multi-layered subsidies (see comments on mixed-finance loan terms, developer’s fee, evidentiary materials); and
- Establish overly prescriptive proposal and application requirements (see comments on the firm commitment application, the mixed-finance proposal, HUD review and approval).

We also share NHLA’s opinion regarding treatment of replacement reserves and the operating reserve. Specifically, the rule should not limit use of replacement reserves solely to capital replacement costs for the Section 202 and Section 811 *units*. Likewise,

we agree that the rule should clarify the three-month operating reserve requirement is a minimum standard which the mixed finance owner has the discretion to increase.

A copy of the NLHA comments follows for your review.

Thank you in advance for your consideration of these comments. NAHMA looks forward to working with the Department to ensure the mixed-finance development rule is a workable framework for developers and a viable option to increase the stock of affordable housing for vulnerable elderly and disabled families.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wayne Fox".

Wayne Fox, HCCP, NAHP-e
President

Attachment