

NAHMAanalysis

NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing

National Affordable Housing Management Association – 400 N. Columbus Street, Suite 203 - Alexandria, VA 22314
Phone 703-683-8630 - Fax 703-683-8634 - www.nahma.org



June 11, 2013

NAHMAanalysis-2013-0611

Program Efficiencies that Would Generate Cost Savings in Federal Multifamily Housing Programs

Background

On March 13, 2012, members of NAHMA's Alternative Futures Working Group (AFWG) began examining multifamily housing policy ideas which could result in program efficiencies, cost savings, and greater public assurance that assistance programs are directed to qualified households. The premise of the AFWG discussions was that substantial budget cuts will take effect in 2013, affordable housing programs and the residents who rely on them will be affected, and NAHMA should discuss proactive initiatives to get ahead of these cuts. Members were concerned that in the absence of a thoughtful approach, mandatory sequestration (i.e. across-the-board spending cuts) required by the Budget Control Act could be imposed haphazardly through cuts to rents and/ or management fees, reductions in families served, or other unwise means.

This NAHMAanalysis will describe the four preliminary policy recommendations approved by NAHMA's Board of Directors to address these concerns. We conservatively estimate the total cost savings to the federal government over a 10-year period would be \$618 million.

Several critical principles guided the AFWG's efforts:

- Arbitrary, haphazard rent reductions harm the physical and financial health of affordable properties and undermine preservation initiatives.
- Whether a property operates under OCAFs, budget based rent increases or AAFs, it needs a dependable, sustainable cash flow to remain viable over the long term.
 - For Mark-to-Market properties, the only appropriate benchmark for the rent is comparable market rents.
 - Properties which operate under budget-based increases must also have sufficient cash flow to maintain operations and to meet obligations to lenders (when applicable).

- Knowledgeable management agents are an essential component of sound property operations, so management fees should reflect the need for such expertise.
- Low-income residents should not be expected to bear the brunt of federal budget cuts.
- Ideas would be evaluated under a knowledge-based approach which would include independent expert analyses of expected costs and savings.

Summary

An initial list of 62 topics and subtopics was narrowed down to eight for expert analyses. NAHMA retained Recap Real Estate Advisors in Boston to estimate each policy's impact on the federal budget, affordable properties and assisted residents. On March 25, 2013, after reviewing Recap's analyses and receiving feedback from NAHMA's membership, NAHMA's Board of Directors approved adoption of four preliminary cost-savings policy recommendations which resulted from this study:

- **Eliminate Costs Unique to Affordable Housing** –the other three policies listed here actually fit under this broad policy as examples of costs unique to managing affordable housing. Cost-savings estimate: \$267 million to \$970 million over 10 years in savings for the federal government; \$130 million to over \$525 million per year in savings to owners.
- **Perform Income Certifications Once for All Programs** – Cost-savings estimate: \$129 million over 10 years in savings for the federal government; \$70 million per year in administrative savings to O/As.
- **Use Federal Tax Returns for Rent Calculations** – Cost-savings estimate: \$84 million over 10 years in savings to the federal government. It would also simplify administration of affordable multifamily housing programs for O/As.
- **Track, Enforce and Prevent Repeat Payment Agreements** – Cost-savings estimate: \$200,000 over 10 years in savings to the federal government.

Assuming a mid-point savings in the policy (i.e., in the range of \$267 million to \$970 million), the total cost-savings conservatively estimated for the policies over 10 years is \$618 million.

Additional ideas being discussed by NAHMA members for inclusion in the policy to eliminate costs unique to affordable housing (but not yet cost-analyzed) are:

- Eliminate interim recertifications ; and
- Reduce the frequency of Management Occupancy Reviews (MORs) to a risk-based assessment timeframe similar to REAC inspections (i.e., 3-2-1). We hypothesize that HUD would have data on the cost to conduct MORs, since the activity is included in PBCA

contracts, and has been left out of the contested state PBCA interim contract renewals due to cost.

Eliminating Costs Unique to Affordable Housing

The current affordable housing regimen has a broad array of compliance requirements, such as income verification, eligibility confirmation (such as criminal background checks, credit histories, student status, etc.), physical property inspections, and financial audits. Property owners and agents are also subjected to operational requirements, which include language translations, lease forms, and approval procedures for increasing the rent of units, plus there are reporting requirements, which include items such as utility allowance reports and TRACS submissions. Overall, these compliance requirements drive up operating costs and consume the time and energy of both owners and federal employees.

Reasons for Change

Many of these requirements are duplicative and require repetitive work by the property management staff to recalculate eligibility and rent amounts under different program rules—such as rules that disagree over whether cents are rounded up or rounded down. Others result in the same oversight being performed at both the state and federal level, with parallel oversight structures. For example, property inspections are completed under the REAC system, the Management and Occupancy Review (MOR) system and also under each state’s low-income housing tax credit scheme.

The Proposal

NAHMA’s proposal would eliminate federal compliance requirements in favor of deference to other levels of government and would also simplify regulatory compliance procedures. While there would be an initial uptick in HUD administrative expenditures to complete the regulatory revisions, the proposal would ultimately reduce the number of HUD inspectors and program administration staff and would reduce the cost burdens on subsidized multifamily housing properties.

The Benefits to the Federal Government: Depending on the assumption of regulatory streamlining that could be possible, it is estimated that implementing this proposal could generate a net savings of between \$267 million and \$970 million to the federal government over the ten-year period 2013-2022.

The Benefits to Owners/Agents: The costs savings estimates for eliminating unique costs to affordable housing are \$130 million to over \$525 million per year in savings to owners.

The cost estimate compared the 2011 cost of property operations for market-rate apartments and subsidized apartments as reported by the National Apartment Association, using the differential as a proxy for the compliance costs under the subsidized regulatory scheme. It looked only at owner-controlled costs, and stripped the cost of utilities, insurance and taxes from the equation. The estimate does not provide a detailed description of compliance costs associated with specific regulatory requirements, nor does it assume all regulatory compliance costs can be eliminated. Rather, it provides a compelling argument for ensuring necessary regulations are streamlined and cost-effective, and for repealing redundant or obsolete rules.

The Benefits to Tenants: The proposal would not affect residents as a whole, although streamlined income verification measures may result in different eligibility determinations for individual residents.

The Detailed Cost Estimate for this proposal is available [here](#).

Performing Income Certifications Once for All Federal Programs

Mixed-financed properties have become increasingly common as older HUD and USDA-Rural Development properties use the Low-Income Housing Tax Credit (LIHTC) for preservation and recapitalization. These programs require owners and managers to complete separate income certifications that verify the eligibility of the tenants living in affordable housing. In some cases, these certifications determine tenants' share of the rent.

Reason for Change

Income certifications for both HUD multifamily subsidies and LIHTCs serve the same purposes, yet there are a variety of differences between them. As examples, rules often differ with regard to rounding amounts to the nearest dollar, and the extent of certified income expenses for medical or child support payments vary. Another obstacle presented to housing providers is the wide variety of forms that are used in income certification. Under the LIHTC structure, the rules and income certifications are delegated by states, whereas HUD uses its own forms and procedures for HUD programs. Thus, property managers must maintain separate and parallel files to ensure compliance with all of the applicable regulatory schemes. Instead of this duality, there should be a uniform federal standard for all income certification procedures, or all income certification for properties subject to LIHTC should be delegated to the states.

The Proposal

NAHMA proposes that a uniform federal standard for income certification procedures should be imposed, or the administration of all income certification procedures should be delegated to the

states for properties subject to LIHTCs. This will lessen the administrative burdens on the federal government, states and owners / agents. Income certifications should be performed only once for all federal programs. Moreover, technology exists that allows the owner/ agent to submit data all at once electronically, and this data may be submitted to all federal agencies.

The Benefits to the Federal Government: Implementing a uniform federal standard that will require income certifications once for all federal programs is estimated to generate a net savings to the federal government of \$129 million over the 2013-2022 ten-year period.

The Benefits to Owners/ Agents: The administrative savings to O/As could approach \$70 million per year. However, at properties with budget-based rents, there would be an impact on the HUD subsidy levels over time.

The Benefits to Tenants: This proposal would not affect residents at all, except to the extent that their income certification process required them to sign multiple duplicative forms.

The Detailed Cost Estimate for this proposal is available [here](#).

Using Federal Tax Returns for Rent Calculations

In calculating rental subsidy amounts, owners and property management agents of privately owned assisted housing are required to use HUD's Enterprise Income Verification (EIV) system to verify applicants' and residents' annual income and benefits information. The EIV system relies on data from the Social Security Administration and certain employment databases.

Reason for Change

Currently owners / agents do not have electronic access to IRS data from income tax returns, and even if they did have access to tax return data (with the appropriate release from the tenant), HUD still requires O/As to use EIV to satisfy the third party income verification requirement . In fact, in response to public comments on the January 2009 version of the EIV final rule, HUD rejected the suggestion that PHAs or owners look at the previous year's tax return to determine annual income. HUD stated, "The use of information from the previous year's tax returns is not an effective method of determining annual income because tenants may not file tax returns."¹

¹ See The Federal Register/ Vol. 74, No. 16 / Tuesday, January 27, 2009 / Rules and Regulations/ Page 4836 at <https://federalregister.gov/a/E9-1248>. This version of the rule had been finalized at the very end of the Bush Administration. After it was published in the early days of the new Obama Administration, HUD delayed implementation and reopened the rule for public comments. On December 29, 2009, HUD published a substantially revised EIV final rule.

Allowing owners/agents to use tax return data could simplify the process of income verification and reduce administrative costs. The onus of certifying income will instead be placed on the government rather than the owner / agent. Similar structures that incorporate tax return data have been used successfully by the Veterans Administration to verify the income reported by recipients of veterans' pension benefits. Of course, the EIV system could be used for tenants that do not file tax returns.

The Proposal

NAHMA's proposal would allow property owners / agents to rely on filed tax returns to verify income for purposes of rent calculation or, alternatively, to incorporate tax return data into the EIV system. Not all tenants file tax returns, but NAHMA believes this income verification option could simplify the process and reduce administrative costs.

The Benefits to the Federal Government: It is estimated that this proposal would generate a net savings of \$84 million for the federal government over the 2013-2022 ten-year period (assuming savings are not redirected elsewhere through appropriations).

The Benefits to Owners/Agents: The proposal would simplify the income verification and rent calculation processes for O/As.

The Benefits to Tenants: Residents as a whole would not be affected, although streamlining income verification measures with tax return data may result in different eligibility determinations for individual residents.

The Detailed Cost Estimate for this proposal is available [here](#).

Tracking, Enforcing, and Preventing Repayment Agreements

Repayment agreements are used by Section 8 property owners to recapture subsidies that were improperly or fraudulently claimed by residents, most often due to underreporting of income.

Reason for Change

While repayment agreements assist the property owner in recovering improper subsidy payments after the error or fraud is discovered, current rules must do more to dissuade residents from under-reporting their income. The proposal focuses on repeat offenders by creating a disincentive for underreporting income or skipping out on repayment agreements. Additionally, O/As have received inconsistent guidance from HUD regarding the Inspector General's interest

in following up on reports of alleged fraud. O/As need greater clarity as to the amount of improperly claimed subsidy that will prompt action from the IG.

The Proposal

The proposal would allow owners and agents to deny rental assistance to tenants with delinquent repayment agreements (i.e., the tenant skipped out on a lease with an outstanding repayment amount due). Furthermore, this proposal would limit repayment agreements to one per tenant (i.e., instead of just repaying the illegitimate subsidy received, tenants would risk their subsidy completely if they under-report income a second time). The proposal also calls for clear guidance on the dollar threshold for automatic referral of fraud to the Inspector General.

In order to implement this proposal, information regarding tenants' repayment agreement history would need to be available to on the EIV system. Version 202D of the Tenant Rental Assistance Certification System (TRACS) will track repayment agreements, but the TRACS system is primarily for HUD use, serving to improve the Department's financial management, data collection, forecasting, and fraud detection. HUD would need to feed this TRACS data into the EIV system so that the information would be readily available. Version 202D of the TRACS system is scheduled for release in the summer of 2013.

NAHMA will support HUD's current plans to begin tracking repayment agreements in the Tenant Rental Assistance Certification System (TRACS) Version 202D and find out what HUD does with information about repayment agreements that O/As send.

The Benefits to the Federal Government: It is estimated that implementing this proposal would save the federal government \$200,000 over the 2013-2022 ten-year period. Also, the proposal would provide greater assurance the proper amount of limited housing assistance is provided to qualified households.

The Benefits to Owners/Agents: There would likely be modest cost savings to owners, stemming from reduced administrative burdens. O/As would benefit from clear guidance on the amount of improper subsidy payment resulting from underreported income that should be reported to the HUD IG.

The Benefits to Tenants: Residents of multifamily assisted housing would be impacted modestly by this proposal. There would be some families who would be found ineligible for housing after having breached repayment agreements or skipped out on obligations prior to finalizing repayment agreements. Their apartments would be rented to alternative eligible families with similar incomes, so there would be little impact on residents *as a whole*.

The Detailed Cost Estimate for this proposal is available [here](#).

Considerations Going Forward

As federal budgets for HUD, USDA-RHS continue to shrink, there are opportunities for serious discussions about regulatory reforms. Already, several pilot programs are being tested to eliminate redundancy in federal programs. For example, a pilot program developed through the White House's interagency Rental Policy Working Group is already underway in six states to conduct one physical inspection of a mixed-finance property every three years. There are plans to expand this pilot program to additional states. Not all costs unique to operating affordable housing can be eliminated. Nevertheless, the challenging budget environment ahead should produce a more receptive audience to ideas about eliminating costly regulatory inefficiencies within federal agencies and in Congress.

An idea which builds on the concept of regulatory streamlining is creating a uniform federal standard for conducting income certifications. This standard would allow owners and agents to perform one income certification for a tenant which will satisfy all of the program requirements for mixed-financed properties. This concept is a component of NAHMA's AFWG recommendations. It is also a topic of interest for the White House Rental Policy Working Group. The challenges are to reconcile different reporting processes across federal and state agencies, to align the definitions of income and to align income calculations. NAHMA will share our research on this issue with the appropriate agency contacts in the Rental Policy Working Group in the hopes of moving this goal forward.

The definition of income across federal programs is also a key consideration in the feasibility of permitting owners and agents to use federal tax returns for rent calculations. Under current policies, O/As project income forward to determine a tenant's rent. Using the tax return for certifications would essentially "look back" on income.

TRACs 202(d) will collect information on repayment agreements from O/As. This collection will include information such as how much the resident owes and who skipped out on the agreement. *At this time*, HUD has concerns about disclosing this information to O/As through EIV, but the idea has not been completely dismissed. HUD is seeking guidance from its Office of General Counsel as to whether disclosing that the tenant owes a debt to HUD would subject the Department to Fair Credit Reporting Act (FCRA) requirements. If HUD were subject to the FCRA, it would face a potential administrative burden. Tenants may have the same rights regarding repayment agreement disclosures that they would with credit reporting agencies such as the right to appeal, ask for corrections, etc.

As mentioned earlier, the AFWG will continue working on ideas to reduce the frequency of MORs and explore the impact of eliminating interim recertifications.

A conversation about moving to risk-based management on MORs is likely to be well-received at HUD. Since August 2011, MORs have only been conducted annually in 11 states. Similarly, HUD's Notice of Funding Availability issued in March 2012 for Performance-Based Contract Administration contracts eliminated the requirement to conduct MORs for all assigned projects. Instead, HUD proposed the following²:

- For projects with ratings of Below Average or Unsatisfactory on their last MOR: One MOR shall be conducted during each 12- month period during the [two-year] ACC Term.
- For projects with a Satisfactory rating on the last MOR: One MOR shall be conducted for 50 percent of the projects during the first 12-month period of the ACC Term and one MOR shall be conducted for the remaining 50 percent of the projects during the second 12-month period of the ACC Term.
- Projects that received an Above Average or Superior on their last MOR will not be reviewed during each 12-month period during the [two-year] ACC Term.
- Mark-to-Market projects would still have annual MORs, regardless of their previous rating.

NAHMA's AFWG strongly believes HUD should include all projects, regardless of whether they are M2M properties, in a REAC-style 3-2-1 timeframe. Similarly, one review should satisfy all federal program requirements on a mixed-finance property. Another idea the AFWG is exploring is advocating for limited reviews rather than full MORs, since roughly half of the information on the HUD-9834 MOR form stays the same from year-to-year.

The AFWG does not have information at this time to estimate the cost savings to the federal government of moving to a 3-2-1 timeframe on MORs. However, we do know that a major reason MORs were excluded from the temporary PBCA ACC contracts in the 42 contested states was to save HUD money. Tenants would also benefit under this scenario because there would be less imposition on them from unit inspections.

The idea of eliminating interim recertifications requires considerable more research. At this time, the AFWG does not have sufficient information to estimate the costs or savings to the federal government, O/As or tenants. This proposal raises an interesting policy question. Should the tenant's rent contribution should be set at a single point in time (at the annual (re)certification) or in real time (as current policy suggests) when the tenant's increase or decrease in income exceeds a certain dollar threshold?

NAHMA will seek additional information from members about their actual experience with interim certifications in terms of subsidy increases or decreases, administrative time, and other

²See "HIGHLIGHTS OF PBCA NOFA & ACC FOR NOFA (2012 CHANGES, DELETIONS, ADDITIONS),"Office of Housing Assistance Contract Administration Oversight March 15, 2012 (updated 04/06/2012); pages 20-23, <http://portal.hud.gov/hudportal/documents/huddoc?id=highlightspbcaandaccnofa.pdf>.

factors. We hypothesize that O/As would save money on administrative costs under this proposal. The federal government may also save money if the dollar value of subsidy savings exceeds the dollar value of subsidy increases.³ The impact on tenants in the aggregate is not known, but some tenants would pay more rent than they would have under the status quo. Also, in Section 8 project-based housing, more than half of the residents are elderly or disabled families who are likely living on fixed-incomes and would not need interim certifications.

Besides eliminating interims altogether, another option the AFWG will consider as it moves forward with its research is whether savings might be achieved by changing the threshold for which interims are required.

Conclusion

The Alternative Futures Working Group has invested a great deal of time on the proposals described in this NAHMA analysis, but their work is not finished. We will be facing lean federal budgets for some years to come, and although it will be difficult, challenging times present opportunities for creative, outside-the-box ideas. Membership on the AFWG is open to all NAHMA Executive, Associate and Affiliate Members. If you would like to join the group, or if you would like to submit an idea for the AFWG's consideration, please contact Michelle Kitchen, Director of Government Affairs at michelle.kitchen@nahma.org.

³ The tenant's subsidy would increase if his rent contribution was lowered as a result of an interim certification, and his subsidy would decrease if his rent was raised.