

## **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](http://www.nahma.org)

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### **ARRA Reporting Requirements Waiver Approved**

The Office of Management and Budget (OMB) has granted Project-Based Section 8 HAP funding recipients a waiver from the American Recovery and Reinvestment Act (ARRA) of 2009 reporting requirements. The OMB is responsible for overseeing the development of the federal budget, evaluating the effectiveness of the federal agencies. It also oversees and coordinates the Administration's procurement, financial management, information, and regulatory policies. Congress gave OMB the responsibility within ARRA to implement and oversee Section's 1512 and 1609 reporting requirements for all ARRA funding recipients.

HUD is expected to make an official announcement regarding the waiver in the coming days and will also be sending letters to affected owners in the near future.

Please note that HUD will still be requiring all Project-Based Section 8 properties to obtain a DUNS number for all contracts going forward later this year.

### **Background**

Under the American Recovery and Reinvestment Act (ARRA, P.L. 111-5), Congress appropriated \$2 billion to fund the 12-month terms of project-based Section 8 contracts. Congress directed that HUD use these funds to alleviate the chronic budget shortfalls that resulted in late or partial subsidy payments to owners. These appropriations were intended to fund the 12-month HAP contract terms, to restore owners' confidence in the program and to allow sound operation of the affected properties.

ARRA included substantial reporting requirements for all agencies and "recipients" of the stimulus money. Section 1512 of the Act required recipients to report about their project plan, the number of jobs created, salaries of their highest paid employees, and other data. The provision also required recipients to fill out the Section 1512 reports between October 1 and 10, 2009. A separate mandate under Section 1609 required recipients to report on environmental impact studies done for ARRA-funded projects.

OMB initially interpreted the legislation to include project owners who received the Project-Based Section 8 appropriations as recipients of ARRA funding. Despite efforts by HUD to persuade OMB otherwise, OMB determined owners who received the ARRA funding were

subject to Section 1512 reporting requirements. However, OMB agreed that Section 1609 did not apply. HUD informed project owners of the reporting obligations on September 15, 2009. Over 5,700 Project-Based Section 8 properties would be required to file reports starting October 1, 2009. While most properties that received ARRA funding would only have to report during the October 2009 period, some properties did receive their full 12-month contracts from the ARRA funding and would have had to file quarterly reports until the money was spent.

In a September 11, 2009 letter to appropriators, NAHMA led an industry coalition that strongly urged Congress to pass legislation providing a waiver from the reporting requirements for multifamily property owners who received Project-Based Section 8 contract funding from ARRA. The industry letter explained that the ARRA appropriations were used to meet HUD's contractual obligations to provide a full 12-month subsidy for its 12-month HAP contracts with multifamily property owners. The industry felt that the legislative intent of the funding and valid policy considerations justified exempting affordable housing providers who received ARRA's Project-Based Section 8 funding from the Act's Section 1512 and Section 1609 reporting requirements. A copy of the industry letter to appropriators may be found here:

<http://www.nahma.org/Leg%20area/FY%2010%20T-HUD%20multifamily%20industry%20requests%20final.pdf>

Several communication and technological issues frustrated efforts by some owners and agents to complete their reporting before the October 10, 2009 deadline. First, properties receive inconsistent notification from HUD regarding their need to file. Some owners reported receiving notification as late as October 7, 2009. Many properties experienced severe time delays and technological difficulties in registering with each of the required programs. NAHMA, Representative Rob Andrews (D-NJ), and other industry colleagues reached out to OMB and requested a waiver for Project-Based Section 8 ARRA funding recipients or, at the very least, an extension of the reporting period so all affected could complete the reports and avoid any consequences that would be associated with a late or incomplete filing. A copy of NAHMA's ARRA Comments to OMB may be found here:

<http://www.nahma.org/content/Grassroots%20Files/NAHMA%20OMB%20ARRA%20reporting%20requirements%20letter%20100509.pdf>

## **Summary**

OMB has provided Project-Based Section 8 HAP recipients a waiver from completing the Section 1512 ARRA reporting requirements. They have given the following justification for this decision:

“The Project-based Rental Assistance (PBRA) program provides rental assistance to low-income tenants in nearly 1.3 million housing units. Residents generally pay 30 percent of their income toward rent and HUD pays the balance of rent and utilities to private owners/landlords of multifamily rental properties. The PBRA program is tantamount to individual benefit programs, which provide assistance to individuals to meet or help meet particular needs, such as paying for medical care, food, or college tuition. In the PBRA program, the benefit provided is quality, safe, and affordable housing and the beneficiaries are low-income families. Although Federal payments are made directly to owners/landlords, those payments are not intended for the benefit of the owners/landlords. They are merely the mechanism for delivering the benefit to low-income families. As with other individual benefit programs, families must meet certain

eligibility criteria to qualify for assistance. For example, they must be at or below 80 percent of area median income.

Because the PBRA program is tantamount to an individual benefits program, and because 31 U.S.C. 7501(a) excludes from the term “Federal financial assistance” amounts received as reimbursement for services rendered to individuals in accordance with guidance issued by the Director, the program is properly excluded from 1512 reporting.”

### **NAHMA’s Position**

NAHMA supports the OMB’s decision to provide Project-Based Section 8 HAP funding recipients with a waiver from the Section 1512 ARRA reporting requirements. Knowing the considerable administrative burden the reporting would place on our members, NAHMA persistently advocated for the waiver. While we would have liked to see this waiver approved before the October 1, 2009 reporting period, this action is better late than never.

NAHMA would like to also remind our members that HUD will be requiring all Project-Based Section 8 properties to obtain a DUNS number in order to implement requirements from a previous regulation. A notice is expected to be released in the Federal Register notifying owners of this requirement. The deadline for obtaining a D-U-N-S number will likely be December 2009 or January 2010. If you would like to obtain a D-U-N-S number, please visit: <http://fedgov.dnb.com/webform>.