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August 9, 2011

Reports Liaison Officer
Room 9120
Department of Housing and Urban Development
451 7th Street, SW.
Washington, DC 20410

**RE: Docket No. FR-5484-N-22
Notice of Proposed Information Collection: Comment Request; Form HUD-9834 Management
Review for Multifamily Housing Projects
OMB Control Number 2502-0178**

To Whom It May Concern:

Thank you for this opportunity to comment on the revised draft of the Department of Housing and Urban Development's (HUD) Form 9834 (OMB Control Number 2502-0178)—the Management Review form for Multifamily Housing Projects.

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. Members of NAHMA are particularly interested in the changes made to this form because contract administrators (CA) use it to conduct multifamily management and occupancy reviews (MOR). These MORs are critically important because they can affect a management agents' ability to take on more HUD-related business. In addition, property owners use them as a factor to evaluate the quality of the manager and/or management company.

In its June 10 *Federal Register* notice, HUD requested public comments on the draft Form 9834, which had been described as an extension of a currently approved information collection. However, this is not a simple extension of an existing form. In fact, Form 9834 was revised substantially to reflect recent updates to: Chapter 6 of the HUD Multifamily Housing Asset Management and Project Servicing Handbook 4350.1; the EIV system requirements; and the TRACS security requirements. Nevertheless, NAHMA commends HUD for incorporating the new ranking and weights from the revision of Chapter 6 of the 4350.1 Handbook in order to achieve greater objectivity.

In posting the document for public comment, HUD requested feedback on the following four specific areas:

- (1) Evaluating whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluating the accuracy of the agency's estimate of the burden (Annual total burden hours: 194,928 hours; Annual burden hours per respondent: 8 hours) of the proposed collection of information;
- (3) Helping enhance the quality, utility, and clarity of the information to be collected; and
- (4) Helping minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

NAHMA and its members have had the opportunity to review the draft document. Our comments will focus on our concerns with HUD's plans to implement the document and the four topics for which HUD had requested public feedback.

Implementation

HUD is planning a major transition from one group of performance-based contract administrators (PBCAs) and set of performance standards to a new group of PBCAs who will operate under a new set of performance standards. Although the transition was supposed to be completed by October 1, HUD has halted the PBCA transitions in a number of states due to pending challenges to the PBCA Annual Contributions Contract (ACC) awards before the General Accountability Office (GAO). As a result, the Department is unsure of when the PBCA transition for all states will be completed. In addition, HUD had not publically announced a contingency plan for carrying out PBCA activities after October 1 by the Form 9834 comment deadline. **NAHMA would urge HUD to stabilize the PBCA transition before implementing the revised Form 9834. At a minimum, we would request that HUD ensure PBCAs are properly trained before requiring them to use the revised form as part of the MOR.** Furthermore, the information collection efforts of Form 9834 are not simply being extended, they are receiving substantial changes based on new HUD regulations and policies. To achieve this goal, **HUD should provide sufficient time between the release of the final Form 9834 and its implementation to ensure PBCAs and O/As can revise their policies, procedures, and trainings to ensure proper compliance with the information collection.**

Practical Utility

The Department uses Form 9834 to evaluate the quality of the management of HUD-assisted projects. The form establishes a clear format for reporting on expected corrective actions when an O/A is not complying with HUD rules and regulations. While the majority of the document's questions tie directly back to handbook policies, regulations, and statutory requirements, the legal citations are not necessarily provided. On the other hand, some questions in Form 9834 do not appear to be related to existing regulatory, statutory, or handbook guidelines. O/As should not be burdened with information collections that serve no clear purpose in evaluating regulatory compliance. **NAHMA recommends that each section of Form 9834 have proper regulatory, statutory, or handbook citations that govern the questions of the document as appropriate. We do not believe that any question that does not have a reference back to regulatory policy, statutory language, or handbook citation should be included in Form 9834.**

Furthermore, the revised Form 9834 contains subjective questions that are inconsistent with HUD's recent efforts to improve the objectivity of the MOR. For example, on page three of the "On-Site Review," Question 6(b) asks the CA to "Walk through at least two vacant units that are ready for occupancy. Assess and document unit readiness." The form does not define "unit readiness." Therefore, opinions of "unit readiness" could vary from one CA to another. Another example may be found on page six of the "On-Site Review," Question 12(b). The form asks the CA "Does the procedure for write-off of bad debts appear reasonable?" Here, the definition of "reasonable" is not defined either. The term "reasonable" is subjective and may vary between PBCAs, as well as between properties depending on the size, location, etc. It is difficult to use these subjective responses to accurately determine if there is a "finding" of non-compliance.

Therefore, NAHMA believes that non-compliance "findings" should be restricted to what can be backed up using a regulatory, statutory, or handbook citation. **Where the form calls for subjective opinions, we strongly urge HUD to either add criteria to help frame uniform, objective answers for the form's more ambiguous questions or remove those questions in their entirety. HUD should also provide the relevant policy citations to justify the question's placement in Form 9834.** This would improve the accuracy and consistency of the data collected by Form 9834.

Improving the Quality, Utility, and Clarity of the Information to Be Collected

NAHMA generally concurs with the thoughtful recommendations made by LeadingAge in the section of their comments “Specific Recommendations to Improve the Quality, Utility, and Clarity of the Collection.” A copy of Leading Age’s comments may be found attached to this letter. The recommendations identified confusing language and typographical errors and made suggestions for correcting these issues. In addition, NAHMA members have identified other areas of Form 9834 that require further clarification.

Part II. On-Site Review

Page 4 Category D Question 9(c): NAHMA members noted the wording on this question has become more confusing after the revisions. **We believe the question should be worded “Are adequate controls in place when cash is accepted?”**

Page 14 Category E Question 22(d)(xiii): The form includes a new question, which asks, “Are repayment agreements in accordance with HUD requirements?” Currently, repayment agreements are drafted by O/As based on terms that are mutually agreed to by both the tenant and the O/A. HUD does not have a standardized form for project repayment agreements. Therefore, **NAHMA strongly urges HUD to cite the specific regulatory, statutory, or handbook requirements the Department has in place in regards to repayment agreements.** In addition, it may be helpful for HUD to issue an official form for repayment agreements that allows O/As, with HUD’s approval, to modify as needed to comply with local laws.

Addendum B

NAHMA members noted that the property identifiers were removed from the top of each page of Addendum B. However, the instructions for Form 9834 still reference the need to fill in the addendum’s property identifiers. NAHMA would request that **HUD reinstate the property identifiers in Addendum B.**

Collection Burden for Respondents

NAHMA members believe the time and paperwork burden placed on O/As, CAs, and HUD officials will increase due to the changes made to the document. The form has increased from 46 pages to 51 pages because of the revisions made. The draft Form 9834 increases the information required to complete the desk and on-site reviews. It also expands the number of questions related to property financials, management certifications, tenant income certifications, tenant file deficiencies, and, if any, tenant repayment plans.

NAHMA believes that the agency’s estimate of eight burden hours needed to prepare the information collection for the HUD Form 9834 is low. For example, our members report that it takes an average 16-24 hours for the management agents to compile the information required and for the contract administrator to complete the current Form 9834, depending on the size of the property and the management company. The annual total burden hours are two to three times the size HUD has estimated it to take to complete the form from start to finish.

NAHMA feels that the additional paperwork and review the revised Form 9834 will generate seems contrary to the goals of the Paperwork Reduction Act of 1995. We believe there are better ways to reduce and streamline the information collected in order to evaluate the quality of a project’s management. Therefore, **NAHMA suggests convening a taskforce of stakeholders—HUD officials, trade associations, PBCAs, multifamily O/As, etc.—to evaluate Form 9834 for the sole purpose of reducing the collection of unnecessary information and improving the quality, accuracy, and consistency of information generated by the collection.**

Conclusion

NAHMA thanks HUD for the opportunity to comment on the revised HUD Form 9834 (OMB Control Number 2502-0178). We do concur with HUD that Form 9834 needs to be updated to reflect the changes made to Chapter 6 of HUD's 4350.1 handbook, updated EIV system requirements, and new TRACS security requirements. However, NAHMA believes that HUD's continued collaboration with stakeholders will help narrow the information collection in both the Form 9834 and the MOR to what is necessary under current HUD handbook policy, regulations, and statute, as well as improve the consistency and accuracy of the data collected. We look forward to continuing our partnership with the Department to improve the oversight and operation of HUD Multifamily affordable properties.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris Cook". The signature is fluid and cursive, with the first name "Kris" being more prominent than the last name "Cook".

Kris Cook, CAE
Executive Director



July 31, 2011

Reports Liaison Officer
Department of Housing and Urban Development
451 7th Street, SW.
Room 9120
Washington, DC 20410

Submitted hardcopy via USPS

Mr. Harry Messner
Office of Asset Management, Policy and Participation
Standards Division
Department of Housing and Urban Development
451 7th Street, SW.
Washington, DC 20410

Transmitted electronically

RE: Comments on Management Review for Multifamily Housing Projects;
OMB Control Number: 2502-0178

Dear Mr. Messner and Reports Liaison Officer,

LeadingAge (formerly AAHSA) appreciates the opportunity to comment on the proposed changes to form HUD 9834 Management Review for Multifamily Housing Projects.

The members of LeadingAge (www.LeadngAge.org) serve as many as two million people every day through mission-driven, not-for-profit organizations dedicated to expanding the world of possibilities for aging. Our 5,700 members, many of which have served their communities for generations, offer the continuum of aging services: adult day services, home health, community services, senior housing, assisted living residences, continuing care retirement communities and nursing homes. Together, we advance policies, promote practices and conduct research that supports, enables and empowers people to live fully as they age. LeadingAge's commitment is to create the future of aging services through quality people can trust.

SUMMARY OF RESPONSE: RECOMMENDED ACTIONS

While the proposed "extension" of form HUD 9834 incorporates some changes in formatting and other innocuous modifications, corrections and/or grammatical changes to previously existing content, it also introduces several new questions and sections related to Enterprise Income Verification (EIV) and sexual offender policies, including. And, as the information collection

notification asks for comments not just restricted to the new elements, our comments address considerations and recommendations related to implementation in light of the current transition of project-based contract administration contract terms and players, the importance of a review of the goals and objectives of the form, minor corrections needed to the rare new typographical error, and certain areas where further clarification would be useful.

**RECOMMENDATIONS FOR at least 60 DAY ADVANCE RELEASE and
STAKEHOLDER CONSULTION PRIOR TO IMPLEMENTATION TO REDUCE
CHAOS DURING PBCA TRANSITION**

We understand that the comment period closes on August 9, and it has been communicated to us that HUD “expects to have completed responses to comments within a month” and that “unless OMB’s extension is withheld, the form should be official and ready for use sometime in early September.” If it was just an extension without change, it wouldn’t be a big deal. However, the Federal Register announcement on July 10 (at <http://www.gpo.gov/fdsys/pkg/FR-2011-06-10/pdf/2011-14470.pdf>) erroneously stated that form HUD 9834 was seeking an “extension of a currently approved collection” whereas there are, in fact, significant changes being proposed to the form. **At any other time, our best recommendation would be to recommend completion and release of whatever final form the document with a delayed implementation so that all stakeholders involved would have time to revise policies, procedures and training as needed to ensure consistent, informed application of the tool. Generally, 60 to 90 days between release and implementation.**

Under the current circumstances, however, given the fact that there is currently a major transition underway between one set of performance-based contract administration (PBCA) contracts and sets of standards, and a new PBCA contract and new set of standards – to say nothing of the pending transition to new PBCAs in many states – introduction of this document at any time during the PBCA transition *for (immediate) effect*, would be most unwelcome and inadvisable.

Because changes to this form will impact stakeholders in various ways – particularly the PBCAs who must be ready to train their staff to implement it, and the owner/agents who are going to be working to develop relationships with incoming new PBCAs – we recommend that this form not be implemented until at least 2 to 3 months after the performance-based contract administration (PBCA) transition is completed. If it had been available prior to the planned for transition, the changes could easily have been incorporated into the new standards. However, as some new PBCA contracts will begin in October, and others may be delayed due protests which have been filed, any implementation in the midst of this process could be chaotic. **Our best recommendation is to seek the feedback of appropriate stakeholders - including but not limited to the incoming PBCA’s themselves, and the local HUD offices and Contract Administration Oversight Monitors responsible for providing guidance and evaluating them – to determine the best time to make the form effective, and to release it with as much lead-time as possible before going into effect.**

The more time stakeholders have time to review it and incorporate it into their training and front-line policies, the better. **We specifically urge HUD to implement a standard implementation policy of no less than 60 days after final publication in all/most forms and policies.**

RESPONSE TO FOUR TARGETED AREAS for this INFORMATION COLLECTION

In posting the document for comment, HUD requested that the public comment on the following four specific areas:

- (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden (Annual total burden hours: 194,928 hours; Annual burden hours per respondent: 8 hours) of the proposed collection of information;
- (3) Help enhance the quality, utility, and clarity of the information to be collected; and
- (4) Help minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

PRACTICAL UTILITY OF THE COLLECTION COULD BE IMPROVED

A concerns item one (1), whether this form is necessary for the proper performance of the functions of the agency, this info collection *is* generally useful as a tool to help HUD, Mortgagees, and Contract Administrators (CAs) to evaluate the quality of project management, and establishes a clear format for reporting on expected corrective actions which can support enforcement actions if owner fail to implement them. As an audit form, there are a number of questions that tie directly back to handbooks, rules and regulations. But several sections ask for subjective opinions (e.g., are owners able to manage the property effectively? Or, are work order delays excessive?), which are not measurable audit questions. As such, they and their responses do nothing to help determine the causes of project problems or to validate the actual existence of a problem. And even the recently revised guidance in HUD Handbook 4350.1, Revision 1, Change 2, Chapter 6 on management review category and overall findings still leaves a lot of room for subjectivity as related to broad interpretations likely where the guidebook terminology specifies only "few", "minimal", "exceptional", "good" and "some."

Where the goal of a question or evaluation depends on opinion, then the worst result should be nothing more than an observation. Findings should be restricted to what can be backed up by a regulatory citation. Furthermore, certainly there are individual actions within common categories can be assumed to be more critical than others, but there is no relative weight given to the various components within the category reviews. More guidance should be given on what merits a "finding" and what merits an "observation." And we recommend devising a method for assigning appropriate weighting per regulatory requirement.

GENERAL RECOMMENDATIONS TO IMPROVE the QUALITY, UTILITY, AND CLARITY OF THE COLLECTION

As concerns item three (3), to help enhance the quality, utility, and clarity of the information to be collected, we have a few general observations and suggestions, and a few specific line item questions and/or recommendations.

First, it is important in the gathering of data to both define the problem or goal, and to measure progress and outcomes. Yet there is nothing in the current form or guidance about layered subsidy or oversight by multiple entities, and nothing to guard against findings on something already identified/corrected (repeat “findings” for file items missing years ago).

The proposed document and related instructions do not adequately address considerations of the likelihood of repeated findings being issued for past errors that have been discovered or oversights that have since been corrected. As such, in any given year, a reviewer can find and cite an owner for the same issues (like file items missing years ago which have previously been cited) which cannot be corrected, as they are historical documents. Or for other oversights, like timely signatures by all family members on a past certification, though all current certifications show that the owner/agent is now routinely collecting them.

Second, HUD needs to determine some way of following up on erroneous findings, those that are successfully appealed by the owner yet typically never actually removed from the property files.

And, third, HUD should begin to collect data on how the tool used is impacting the partners/participants using it or upon whom it is applied. For considerations of this size and scope, as this form impact not just the entire Section 8 portfolio, but all subsidized programs, it is critical to bring together the range of stakeholders as each brings a different insight/perspective to bear, which validly can impact the manner or method of conveying the goals and ensuring the consistent application of this tool.

SPECIFIC RECOMMENDATIONS TO IMPROVE the QUALITY, UTILITY, AND CLARITY OF THE COLLECTION

Following are some specific comments and recommended changes that can impact clarity and/or usefulness of the collection tool:

Form HUD 9834 Cover Page, Instructions, line 3. It is incorrect and misleading to state that Reviewers of subsidized projects must complete all Addenda (A,B,C and D) when Addendum B is meant to be filled out by the owner and merely collected by the PBCA. And the new Addendum D cannot be filled out by anyone but the owner.

Form HUD 9834 Cover Page, Instruction C, bullet 4, limits appeals to only below-average and unsatisfactory ratings, but we believe that appeals should be allowed for all ratings, to include

satisfactory and above average. As the new scoring guidance is still being integrated into the revised document, the ability to appeal any/all category scores should be accepted.

Summary, Sections A – F, provide additional guidance in Handbook 4350.1 Chapter 6 on the generalized terms of “few”, “some”, “minimal” etc, and weight the value of individual questions based on relevance and significance in terms of overall compliance.

Desk Review, Part 1, Question 9 (page 2 of 6), better define what constitutes “acceptable” form of operating budgets.

Desk Review, Part 1, Question 19 (page 3 of 6), add option of “N/A” in responses.

Desk Review, Part 1, Question 49 (page 6 of 6) instructs reviewer to note any unresolved finding from previous management reviews. This might be a good place to insert a direction or new numbered question to note any findings for historical oversights which have previously been addressed. This would help the reviewer to better focus on evaluation of current documentation practices, policies and procedures.

On-Site Review, Category D, Item 8(d) (page 4 of 19), if this question is relevant only for PRAC properties, then the term should be included in the question before the first comma, and will help to avoid confusion or misapplication for any of the earlier phases of the Section 202 program, with or without Section 8 subsidy.

On-Site Review, Category D, Item 9(b) (page 4 of 19), there is a typo, such that the stray “b” needs to be removed from the 4th word “when**b**”.

On-Site Review, Category D, Item 11(f) (page 5 of 19), the word “on” should be “of” – and in “a list of outside contractors”.

On-Site Review, Category D, Item 13(a) (page 6 of 19), there is a stray “a” that needs to be removed from the end of “thata”

On-Site Review, Category E, Item 14(g) (page 7 of 19), the question asks if all required criteria stated in Figure 4-2 of Chapter 4, Handbook 4350.3 Rev-1 have been incorporated in the written tenant selection plan. There are, however, additional requirements for elements to be found in tenant selection plans which are not specifically stated in Figure 4-2. HUD needs to revise, further update, this list of criteria.

On-Site Review, Category E, Item 14(k) (page 8 of 19), utilizes the incorrect tense (“become”) when discussing historical data. It should, instead, read “became” as in “is documentation available to show that the owner/agent has leased [appropriate percentage] of Section 8 units that became available for occupancy in the previous fiscal year....”

On-Site Review, Category E, Item 15(e) (page 8 of 19), need to add a selection of “N/A”, as late fees cannot be assessed in 202/8 properties.

On-Site Review, Category E, Item 17(c) (page 9 of 19), the third bullet needs to be revised to begin with “Current” signed copies....

On-Site Review, Category E, Item 22(b) (page 12 of 19), where there is a review of historical documents, like inclusion of signatures and dates of the initial application on file, if past findings have covered the issue, then no new finding should be issued unless it is for documents/applications initiated *since* the last review.

On-Site Review, Category E, Item 22(f)(iv) (page 15 of 19), the question regarding use of EIV existing tenant search could be clarified to include the mandatory date after which this requirement was initiated (January 31, 2010).

On-Site Review, Category E, Item 22(g and h) (pages 15 and 16 of 19), address incorrect use of the current tense when discussing historical documentation – replace “do” with “did”; and “are” with “were” throughout these questions.

On-Site Review, Category F, Item 24(a) (page 16 of 19), we recommend the inclusion of “recycling” among the list of services provided to tenants, as it is an increasingly common operational element of interest to tenants and owner/agents

On-Site Review, Category G, Item 25(g) (page 18 of 19), there is a space missing between “and” and “emergency”.

On-Site Review, Category G, Item 27(b) (page 19 of 19), need to include a “N/A” option at the top.

Tenant File Review Worksheet, Addendum A, Section A, question 2, (page 1 of 5), the note in bold has a typo, “compled” should read “completed”.

Tenant File Review Worksheet, Addendum A, Section B, question 1, (page 2 of 5), we recommend inclusion of a note that the exemption for SSN disclosure is for seniors 62 or over and receiving subsidy as of Jan 31, 2010.

Tenant File Review Worksheet, Addendum A, Section F, (page 5 of 5), we recommend adding a new question 6 to read, “If tenant owed money to the owner/agent, was it paid?” with response options: Y, N, N/A.

Tenant File Review Worksheet, Addendum A, Section F, questions 2 and 6 (page 5 of 5) asks for the date of the move-out inspection (which may or may not reflect the actual date of move-out) and then question 6 asks if the tenant move-out date on the voucher matches the date the tenant

vacated? Yet there is no instruction/information on how the reviewer is to obtain the actual date the unit was vacated.

Addendum B, Part A, instructions (page 3 of 13), last sentence has a truncated word or incomplete correction – the sentence likely should read “the review will *obtain* the completed form from the owner/agent...”

Addendum D, Instructions indicates that this document should be filled out by the reviewer, but it is our belief that this document should be filled out by the project owner/agent as the reviewer will not have access to the data/statistics sought.

Addendum D, Item 1a, Note, indicates that “households must not be evicted unless they commit criminal activity while living in the federally assisted housing, or have other lease violations” which implies a new policy in an area which has previously been left up to the discretion of the owner/agent. This note should be removed.

We thank you for this opportunity to comment. Any questions related to this submission may be directed to Colleen Bloom at cbloom@leadingage.org or (202) 508-9483.

Sincerely,

Colleen Bloom
Associate Director for Housing Operations