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HUD Desk Officer
Office of Management and Budget
New Executive Office Building
Washington, DC 20503
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**RE: Docket No. FR-5480-N-107
Notice of Submission of Proposed Information Collection to OMB; Management Reviews
of Multifamily Housing Programs
OMB Control Number 2502-0178**

To Whom It May Concern:

Thank you for this opportunity to comment on the second revision 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/As), 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 (MORs). 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 the management company.

In June, Form 9834 received its first revision to reflect 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. NAHMA provided comments focused on our concerns with HUD's plans to implement the document, the document's practical utility, and collection burden on respondents.

Based on the feedback HUD received, some revisions were made to the draft Form 9834. On October 26, HUD notified the public in the *Federal Register* it had created a second draft of Form 9834 for public comment. In posting the second draft of Form 9834 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: 178,423 hours; Annual burden hours per respondent: 7 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's comments will focus on our concerns with HUD's plans to implement the document and the four topics for which HUD requested public feedback.

Implementation

HUD is still 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. As of October 1, however, only 11 states have completed the transition to the new PBCA Annual Contributions Contract (ACC). HUD is planning to rebid the 42 other state contracts through a Notice of Available Funding (NOFA), but the Department has not yet released the NOFA or announced whether the PBCAs who win the NOFA will operate under the same ACCs as those who won the initial rebid. In the meantime, HUD has also informed incumbent PBCAs that they will not be conducting MORs in the 42 states awaiting the NOFA rebid.

Because there is still such a high level of uncertainty surrounding the PBCA transition process and the new Form 9834 has been substantially revised, NAHMA strongly encourages HUD to provide sufficient time between the release of the final Form HUD- 9834 and its effective date. During this interim period, we strongly urge HUD to ensure PBCAs are properly trained before requiring them to use the revised form as part of the MOR. This will help HUD ensure PBCAs and O/As can revise their policies, procedures, and trainings to ensure proper compliance with the information collection when the final form is required.

Practical Utility

The Department uses Form HUD-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. Furthermore, some questions in Form 9834 do not appear to be related to existing regulatory, statutory, or handbook guidelines.

NAHMA is disappointed that HUD did not adopt our August 9 comment which recommended that the Department include the proper regulatory, statutory, or handbook citations that govern the questions on Form HUD-9834. O/As should not be burdened with information collections that serve no clear purpose in evaluating regulatory compliance. Any question that does not have a reference back to regulatory policy, statutory language, or handbook citation should not be included in Form 9834. NAHMA continues to strongly recommend that HUD remove any questions from Form HUD-9834 that cannot be properly referenced to policy citations.

NAHMA would also like to note that the revised Form 9834 still contains subjective questions that are inconsistent with HUD's efforts to improve the objectivity of the MOR. Two examples include:

- **On-Site Review, page three, Question 6(b):** "Walk through at least two vacant units that are ready for occupancy. Assess and document unit readiness." The form does not define, "unit readiness," and therefore, opinions of "unit readiness" could vary from one reviewer to another.
- **On-Site Review, page six, Question 12(b):** "Does the procedure for write-off of bad debts appear reasonable?" The term "reasonable" is also subjective and may vary between PBCAs, as well as between properties, depending on the size, location, etc.

Where the form calls for subjective opinions, we strongly urge HUD to either add criteria to help frame uniform, objective answers for the more ambiguous questions or remove those questions in their entirety. 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 would like to thank HUD for making the following changes based on our August 9, 2011 comments on the June draft to the October draft of HUD Form 9834:

- **On-Site Review Page 4, Category D, Question 9 (b):** This section's wording was corrected to read: "Are adequate controls in place when cash is accepted?"
- **Addendum B:** The property identifiers on the top of each page of Addendum B were reinstated.

Nevertheless, NAHMA members have identified several issues within the October draft of Form 9834 that require further clarification.

Cover page of Form HUD-9834, Instructions

Please clarify the instructions regarding where owners should send the completed Addendum B, Part A.

- **Instructions on the cover page of Form HUD-9834 (Paragraph A-Prior to On-Site Review, first bullet)** requires the owner to "complete Addendum B, Part A, and send it to *Multifamily Housing*." (Italics added.)
- **On page 3 of Addendum B, the last sentence of the first full paragraph under Part A** states, "The reviewer will retrieve the completed form from the owner/agent during the on-site review."
- Likewise, **Instructions on the cover page of Form HUD-9834 (Paragraph C-After On-Site Review, second bullet)** requires the reviewer to complete "Addendum B Section A" and to forward the completed form to FHEO.

NAHMA members are uncertain whether they are supposed to send the completed Addendum B Part A to HUD-Multifamily or keep it and give it to the reviewer during the on-site review.

Furthermore, **instructions on the cover page (Paragraph C- After On-Site Review, second bullet)** include typographical errors. The current bullet reads as follows:

"The reviewer completes Addendum B Section A and forwards the completed form to **FHEO must provide FHEO** [emphasis added], along with the approved initial or updated Affirmative Fair Housing Marketing Plans in accordance with "General Operational Procedures for the Civil Rights Front-End and Limited Monitoring Reviews of Subsidized Multifamily Housing Projects", which may be found on FHEO's web site."

We would ask HUD to clarify this sentence.

Summary

The **overall rating** section at the bottom of the page references a "utility" to help calculate MOR scores, based on the ratings guidance provided by Chapter 6 of HUD Handbook 4350.1, REV-1. However, no utility has been included in the form. The absence of the utility is also a concern because the summary section does not specifically instruct reviewers how to score limited reviews (in which one or more categories are not rated), other than to enter a zero for that category.

NAHMA urges HUD to specifically direct reviewers to the instructions for scoring limited reviews in HUD Handbook 4350.1 REV-1, Change 2, Chapter 6, Paragraph 6-11.E. Likewise, HUD should include the calculation utility in the final Form 9834. We would also request HUD reach out to industry stakeholders,

prior to final release of the Form 9834, to ensure the utility works as intended and provides objective MOR scores.

Part II. On-Site Review

Page 2 Category B Question 4(a): The question asks “Is there a certification on file documenting that the project has been certified to be free of lead-based paint or lead hazards?” NAHMA members request clarification on the extent of certification/documentation required. Does HUD require the entire lead-free inspection report or would the finding page alone be adequate for the PBCA project file?

Page 13 Category E Question 22(d)(x): Both the June and October drafts of Form 9834 included a new question—“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.

NAHMA strongly urges HUD to cite the specific regulatory, statutory, or handbook requirements the Department has in place in regards to repayment agreements. HUD should clarify that PBCAs may not require O/As to include language in repayment agreements which is not required by current statutory, regulatory or handbook policies. Likewise, it may be helpful for HUD to collaborate with industry stakeholders to develop a standardized form for repayment agreements, which could be modified by O/As as necessary and with HUD’s approval, to comply with local laws.

Page 14 Category E Question 22(g)(i): This new question asks “Do tenants provide written notice of intent to vacate in accordance with the HUD model lease?” The question allows a deficiency to be recorded when tenants do not provide a written notice of their intent to vacate. NAHMA strongly objects to this question. HUD should not treat a tenant’s failure to abide by the lease terms as a file deficiency on the MOR. Whether the tenant provides the notice is beyond the O/A’s control, and the O/A should not be penalized for the tenant’s noncompliance.

Page 15 Category F Question 24(a): NAHMA is unclear about the purpose of the question, “What social services are provided by the project, or the neighborhood, which meet the tenants’ needs?” For example, members understand why HUD would ask whether there is child care on site, but why would HUD need a list of child care providers in the neighborhood? The question seems unnecessarily broad.

Addendum A

Page 5 Category D Question 18 of the Tenant File Review asks, “Has tenant entered into a written repayment agreement for monies due to the project? If yes, does the plan contain the required information?” Again, 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. Also, we are unsure what is meant by “required information.”

NAHMA strongly urges HUD to cite the specific regulatory, statutory, or handbook requirements the Department has in place in regards to repayment agreements. HUD should clarify that PBCAs may not require O/As to include language in repayment agreements which is not required by current statutory, regulatory or handbook policies. Likewise, it may be helpful for HUD to collaborate with industry stakeholders to develop a standardized form for repayment agreements, which could be modified by O/As as necessary and with HUD’s approval, to comply with local laws.

Addendum B

Page 4, Section II Question 5: Please clarify whether “Total Accessible Units” must be UFAS compliant to be accessible, or whether the units may be counted as accessible if they were modified to accommodate an accessibility issue?

Currently, the **Owner Signature fields for Sections I and II** follow the page break for each section. In other words, the signature field for Section I is located at the top of the page for Section II, and the signature field for Section II is located at the top of the page for Section III. If possible, we request that HUD reformat these pages so that the signature fields fit on the same pages as their corresponding sections.

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 October draft form 9834 is 49 pages—less than the 51 page draft released in June, but still more than the currently approved 46 page form. The October draft of Form 9834 increases the information required to complete the desk and on-site reviews when compared to the current form. It also expands the number of questions related to property financials, management certifications, tenant income certifications, tenant file deficiencies, and tenant repayment plans.

NAHMA believes that the agency's estimate of seven burden hours needed to prepare the information collection for the HUD Form 9834 is extremely 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 longer than HUD has estimated necessary 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 continues to urge HUD to convene a taskforce of stakeholders—HUD officials, trade associations, PBCAs, multifamily O/As, etc.—to evaluate Form 9834 for the purposes of reducing the collection of unnecessary information and improving the quality, accuracy, and consistency of information generated by the collection.

Conclusion

Thank you again for the opportunity to comment on the revised draft of Form HUD-9834 (OMB Control Number 2502-0178). NAHMA agrees that Form HUD-9834 should be revised to conform to Chapter 6 of HUD's 4350.1 handbook, updated EIV system requirements, and new TRACS security requirements. However, we still believe that 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. NAHMA looks forward to continuing our partnership with the Department to achieve these goals.

Sincerely,



Kris Cook, CAE
Executive Director