



400 North Columbus Street, Suite 203
Alexandria, VA 22314
(703) 683-8630
(703) 683-8634 FAX
www.nahma.org

January 9, 2006

Mr. John D. Graham
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, N.W.
New Executive Office Building, Room 10201
Washington, D.C. 20503

RE: OMB Proposed Bulletin for Good Guidance Practices

Dear Mr. Graham:

The National Affordable Housing Management Association (NAHMA) represents owners and individuals involved with the management of affordable multifamily housing developments which are subject to the regulations of federal agencies. Most notably, our members are affected by the policies of the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Agriculture – Rural Housing Service (USDA-RHS) and the Internal Revenue Service (IRS). 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.

NAHMA commends the Office of Management and Budget (OMB) for its efforts to bring more transparency, consistency and accountability to agency guidance practices. We appreciate the opportunity to assist OMB's efforts and respectfully offer the following comments on the draft document.

General Impressions

According to the supplementary information provided in OMB's November 23, 2005 announcement,

The purpose of GGP is to ensure that agency guidance documents are: developed with appropriate review and public participation, accessible and transparent to the public, of high quality, and not improperly treated as binding requirements. Moreover, GGP clarify what does and does not constitute a guidance document to provide greater clarity to the public. All offices in an agency should follow these policies and procedures.

We believe the Proposed Bulletin for Good Guidance Practices (GGP) is a very positive step in the right direction. NAHMA welcomes standardization of the guidance process.

One suggestion we would offer is to add a section in the GGP which instructs agencies on the appropriate situations to issue guidance as opposed to making policy through normal rule-making procedures.

I. Definitions

"Guidance Document." Section I(2) defines "guidance document" as "a document, other than a document issued pursuant to 5 U.S.C. § 553 or § 554, prepared by an agency and available to the PROTECTING THE INTERESTS OF AFFORDABLE HOUSING PROPERTY MANAGERS AND OWNERS

public to describe the agency's interpretation of or policy on a regulatory or technical issue." NAHMA believes a broader definition of "guidance document" is necessary. Our members have experienced situations in which HUD has issued instructions to their field offices and began to enforce new policies prior to any formal written public notice about policy changes and without updating public documents, regulations, notices, handbooks, etc. upon which our members rely to stay in compliance. We recommend expanding the definition to recognize that policy changes and/or interpretations communicated from headquarters to field offices is also guidance. We further recommend that this internal guidance be made available to the public upon release.

"Significant Guidance Document." The definition found in Section I(3)(iii) recognizes that a "change in interpretation or policy" can be a component of a significant guidance document. We would note that agency staff and the public sometimes differ on what constitutes a "change in interpretation or policy." We are concerned that absent direct instruction and oversight, the GGP process can be circumvented.

II. Basic Agency Standards

Approval Procedures. NAHMA appreciates that the approval procedures described in Section II(1) provide some flexibility for departure from the process when necessary. While we are pleased to see greater oversight and standardization of process for issuing agency guidance, our members also recognize there are times when agencies must move quickly to address an urgent situation. For example, agencies must be able to issue prompt guidance to owners and management agents responding to housing needs of natural disaster evacuees. Likewise, there are times when guidance issued by the agencies requires further clarification. It is important to strike a careful balance between the need for a standardized process and the ability for agencies to respond promptly to urgent situations.

Standard Elements. Language should be added to Section II(2) which requires agencies to provide a written explanation of the legality, application and enforceability of guidance. With respect to Section II(2)(vii), please also be aware that guidance has been used to impose new obligations that are found nowhere in statutes or current regulations. For example, on December 19, 2003, HUD released its draft guidance "Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance was published in the *Federal Register* for public comment. NAHMA members are particularly concerned by provisions in the draft guidance which called for providing translation of "vital" documents and oral interpretation services to LEP persons at the project's expense. Such obligations are not found in any HUD-related statutes or regulations of which we are aware.

III. Public Access and Feedback

Public Feedback. Section III(2)(3) should be changed to require agencies to respond to comments on significant guidance documents in order to allow for a meaningful public comment process.

IV. Notice and Public Comment for Economically Significant Guidance Documents

Exemptions. With respect to Section IV(2), we recognize there may be situations for which the GGP may not be "feasible and appropriate." It is important to strike a balance between the need for standard operating procedures and the ability to respond rapidly to a crisis.

Conclusion

The final comment we offer concerns realistic implementation timeframes of new policies. An ongoing frustration for NAHMA members occurs when major policy changes, such as those included in HUD's Handbook 4350.3 "Occupancy Requirements of Subsidized Multifamily Housing Programs" are made effective immediately upon release. We and other industry trade associations have urged HUD in the strongest possible terms to provide a reasonable time for implementation of the handbook changes after PROTECTING THE INTERESTS OF AFFORDABLE HOUSING PROPERTY MANAGERS AND OWNERS

the final document is released. Some of the proposed changes will significantly affect procedures, necessitate software changes and staff training and require time to put them into place. Realizing that this comment may be beyond the scope of the GGP, we nevertheless feel it is important to raise the issue.

Thank you again for the opportunity to offer these comments. Please do not hesitate to contact me or Michelle Kitchen, NAHMA's Director of Government Affairs, if we can be of assistance in this effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris Cook". The signature is fluid and cursive, with a prominent initial "K" and a long, sweeping underline.

Kris Cook, CAE
Executive Director