

# **MEMORANDUM OF UNDERSTANDING**

**BY AND BETWEEN**

**UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
AND**

**OREGON HOUSING AND COMMUNITY SERVICES**

**AND**

**UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT**

**WHEREAS**, this Memorandum of Understanding (MOU) establishes the framework for a continued working relationship by and between the United States Department of Housing and Urban Development (HUD) and the Oregon Housing and Community Services (OHCS) and the United States Department of Agriculture, Rural Development (RD), collectively, the Parties, in connection with a pilot program developed at the request of HUD, RD and the U.S. Department of the Treasury, to establish a protocol for one federally-sponsored physical inspection of a property, at an agreed-upon interval, for certain properties with multiple sources of federal funding. The sources of funding include: HUD's Section 8 Project-Based Rental Assistance Program authorized under 42 U.S.C. §1437f and under Section 8(o)(13) of the Act, HUD's Section 9 Public Housing program assisted under 42 U.S.C. § 1437g, HUD's Multifamily Mortgage Insurance Program authorized under 12 U.S.C. §1713 and HUD's Capital Advance under 12 U.S.C §1701q, HUD's HOME Investment Partnerships Program (HOME) authorized under title II of the Cranston-Gonzalez National Affordable Housing Act (1990) (42 U.S.C. §12701 et seq.), and the Oregon Housing and Community Services' low-income housing tax credit allocation which is authorized under Section 42 of the Internal Revenue Code; and RD's Section 515 Rural Rental Housing Program authorized under 42 U.S.C. §1485;

**WHEREAS**, the pilot program will include the attached list of multifamily housing properties funded under two or more of the programs identified above (aligned properties);

**WHEREAS**, HUD, OHCS and RD recognize that they share mutual interests in ensuring that the public interest is served by enabling HUD, the OHCS and RD to timely share certain on-site review reports related to projects receiving funding from the abovementioned source;

**NOW THEREFORE**, the Parties hereby agree to cooperate as follows:

## **I. PURPOSE**

### **A. Purpose of the MOU**

The purpose of this MOU is to set forth the conditions, safeguards and procedures among the Parties regarding physical inspections on aligned properties.

## **B. MOU Parameters**

In order to effectuate the objectives of the MOU, the Parties agree as follows:

### 1. Lead Agency to Perform Inspections

For all projects involving the Section 8 Project-Based Rental Assistance Program, Section 9 Public Housing program, Multifamily Mortgage Insurance Program, and/or Capital Advance, HUD REAC will be the lead agency to perform the inspection.

For projects involving only Low Income Housing Tax Credits and the Section 515 Rural Rental Housing Program, RD will be the lead agency to perform the inspection.

For projects involving only Low Income Housing Tax Credits and HOME, OHCS will be the lead agency to perform the inspection.

For projects involving only the Section 515 Rural Rental Housing Program and HOME, OHCS will be the lead agency to perform the inspection.

### 2. Follow-up on Inspection Deficiencies

For joint projects involving HUD, the Commission will follow up with the owner on inspection deficiencies reported by HUD's Real Estate Assessment Center (REAC) to ensure noncompliance is corrected within required IRS timeframes. The Commission will forward via email results of the follow-up to HUD and RD. HUD or Project-Based Contract Administration (PBCA) contracted staff will audit completion of corrections as certified by the owner at the next annual MOR visit. For joint projects involving the Commission and RD, Commission will follow up with the owner on RD-reported inspection deficiencies to ensure noncompliance is corrected within required IRS timeframes.

### 3. Property Inspection Frequency

The Parties agree that aligned properties should be inspected at least once every three years, or as otherwise required by law. The Parties reserve the right to perform follow-up inspections at any time to confirm compliance with program requirements.

The Parties agree to establish a date to determine pilot program inspection scheduling within two weeks of signing of the MOU.

### 4. Property Inspection Protocol

The Parties agree to use a mutually-acceptable inspection standard, at a minimum the Uniform Physical Condition Standards or the RD inspection, as appropriate. Further, the Parties agree on a sample size acceptable to all, in accordance with any waivers provided by the lead agencies.

### 5. Program Requirement Stipulations

To facilitate participation in the pilot program, certain program requirements must be waived so that property owners are not penalized due to pilot program requirements.

In accordance with HUD's September 22, 2011 memorandum waiving select HOME property standard requirements for grantees involved in the pilot program, aligned properties funded under OHCS' HOME program will not be subject to the housing quality standards requirements under 24 CFR §92.251(c) and the ongoing on-site unit inspection requirements under 24 CFR §92.504(d) for the one-year period beginning November 1, 2011, provided that OHCS participates in the pilot program and informs

HUD regarding (1) the current property standards OHCS uses for inspecting HOME-assisted units; (2) the HOME projects included in the pilot program, including the name, address and IDIS activity number; and (3) the number of HOME-assisted units affected by the waiver.

In general, physical inspections performed by HUD or a HUD contractor on properties with FHA insurance or a project-based Section 8 contract include vacant units in the random sample of units to be inspected only when the property has a vacancy rate of 15% or more. However, other federal agencies taking part in the pilot require that vacant units be inspected.

As a result, HUD stipulates that, during this pilot, physical inspections performed by HUD or a HUD contractor on properties participating in the Pilot will inspect all vacant units included in the inspection sample. However, if a property with FHA insurance or a project based Section 8 contract has a vacancy rate less than 15%, the REAC report of such an inspection will note all deficiencies in the vacant units inspected (for use by the other Parties), while for HUD purposes, REAC will automatically restore any points deducted from the final REAC score based on any vacant units inspected.

In addition, the Parties may be responsible for performing certain tasks that, under this MOU, may be delegated to another of the Parties.

**6. Reporting format consistency**

Reporting formats should be acceptable and usable among all of the Parties for each of the Parties' purpose. When inspections are conducted by HUD, the REAC generated report will be provided. When inspections are conducted by RD, the current inspection report will be provided in accordance with the current MOU.

**7. Information sharing commitment**

The Parties agree to share information for the purpose of ongoing project oversight. The Parties agree that owners will receive prompt written notice of the inspection results. Inspection reports will be provided to the owner and the Agencies promptly after the inspection (i.e., within approximately 10 working days). Property owners are expected to respond to the lead agency and that lead agency agrees to share the owners' response with the other Parties.

**8. Universe of programs/projects included in pilot**

See Attachment A.

**9. Commitment of staff resources to pilot.**

The Parties agree to commit staff resources to the pilot effort in order to ensure communication and data sharing.

**C. Disclosure of Information and Reports**

1. The shared information and reports shall be disclosed to third party requesters in accordance with applicable State and Federal laws and regulations, including but not limited to the Freedom of Information Act (FOIA), 5 U.S.C. §552, and the Privacy Act, 5 U.S.C. §552a.
2. Requests from the public for copies of physical inspection reports from REAC:
  - a) REAC reports are HUD records; and are, in some circumstances, non-public information.

- b) Requests from the public that are made to RD or OHCS for copies of REAC reports will be referred to HUD for processing in accordance with applicable Federal law and regulations, including but not limited to the Freedom of Information Act (FOIA), 5 U.S.C. §552, and the Privacy Act, 5 U.S.C. §552a.
- c) Such referrals should be forwarded to HUD's FOIA Public Liaison listed below:

Regional Lead  
U.S. Department of Housing and Urban Development  
Seattle Federal Office Building  
909 First Avenue, Suite 200  
Seattle, WA 98104-1000  
(206) 220-5101

#### **D. Limitations on Obligation and Financial Commitment**

Notwithstanding any other provision of this MOU, this MOU does not obligate funds, personnel, services, or other resources. This MOU is an expression of intent only. Each of the Parties acts as an independent agency with respect with performance of duties under the MOUs and does not represent that it is an employee or agent of any of the other Parties. This MOU does not give a third party any benefit, legal or equitable right, remedy, or claim under this MOU.

#### **II. TERM OF MOU**

This MOU shall be effective as of the date of execution by all of the Parties, and shall remain in effect for at least one year or until the Parties agree to amend or terminate it.

#### **III. GENERAL TERMS**

1. This MOU may only be amended by mutual written agreement of the Parties involved.
2. Any of the Parties may terminate the MOU upon written notice to the other Parties, in which case termination shall be effective no sooner than 30 days after the date of that notice, except as required by law.
3. All of the Parties shall adhere to applicable State and Federal law and regulations in accessing the data and ensuring that the data is stored securely.
4. This MOU may be executed in counterparts, each of which shall be deemed to be an original, and all counterparts, when taken together, shall constitute one and the same MOU.
5. The invalidity or unenforceability of any provision of this MOU shall not affect the validity or enforceability of the remaining provisions of this MOU.
6. This MOU is not intended to, and does not, restrict the authority of any of Agencies to act as required by State and Federal law, statute or regulation.
7. This MOU shall be governed by and construed in accordance with the laws of the State of Oregon and the federal laws of the United States of America. In the event of any conflict, federal law will prevail.

#### **IV. CONTACT PERSONS/AUTHORIZED OFFICIALS**

A. The primary contact at HUD for all matters related to transmittal of data is:

Doug Carlson, Director  
Community Planning and Development  
HUD - Oregon State Office  
400 SW Sixth Avenue #700  
Portland, OR 97204-1632

B. The primary contact at OHCS for all matters related to transmittal of data is:

Diana Koppes, Division Administrator  
725 Summer Street NE, Suite B  
Salem, OR 97301-1266

C. The primary contact at RD for matters relating to transmittal of data is:

Rod Hansen, Housing Programs Director  
1201 NE Lloyd Blvd., Suite 801  
Portland, OR 97232

D. All notices under this MOU shall be in writing and served on the Parties at the addresses specified above and delivered (i) by personal delivery, (ii) by overnight delivery service using a nationally recognized overnight delivery service (such as UPS or Federal Express), or (iii) by e-mail or facsimile transmission. Any notice shall be deemed effective for the purposes of this MOU at the date of delivery (if hand delivered), or one (1) business day after being deposited with a recognized overnight delivery service, or the day sent (if sent by e-mail or facsimile transmission).

#### **V. APPROVALS**

Now, therefore, in cooperation, the Parties hereto consent to the provisions of this MOU.

MEMORANDUM OF UNDERSTANDING  
BY AND BETWEEN  
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
AND OREGON HOUSING AND COMMUNITY SERVICES AND THE  
U.S. DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT

SIGNATURE PAGE

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: Mary E. McBride 11/28/2011  
Mary McBride, Region X Administrator Date

OREGON HOUSING AND COMMUNITY SERVICES

By: Margaret Van Vliet 11/28/11  
Margaret Van Vliet, Director Date

U.S. DEPARTMENT OF AGRICULTURE/RURAL DEVELOPMENT

By: Vicki Walker 11/28/11  
Vicki Walker, State Director Date