

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND

WASHINGTON STATE HOUSING FINANCE COMMISSION
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 Washington State Housing Finance Commission (the Commission) and the United States Department of Agriculture, Rural Development (RD), individually an Agency and collectively "the Agencies," in connection with a pilot program developed at the request of HUD, RD and the United States Department of the Treasury, and other participating jurisdictions, if needed, 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 (which excludes vouchers) authorized under 42 U.S.C. §1437f, HUD's Multifamily Mortgage Insurance Program authorized under 12 U.S.C. §1713 and HUD's Capital Advance under 12 U.S.C §1701q, the Commission's 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, multifamily housing properties having two or more federal sources of funding using the programs identified above are considered "aligned" properties for purposes of this MOU. A list of aligned properties to be included in the pilot project is attached;

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

NOW THEREFORE, the Agencies 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 above agencies to perform physical inspections on aligned multifamily 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 joint Projects involving HUD, the Seattle Multifamily Hub HUD office will be the lead agency for inspections. For joint Projects involving only the Commission and RD, RD is the lead agency for inspections.

2. Follow-up on Inspection Deficiencies

When the Commission follows up with the owner on inspection deficiencies to ensure noncompliance is corrected within required IRS timeframes, the Commission will forward via email results of the follow-up to HUD and RD. For pilot projects involving the Commission and HUD funding, HUD will audit results reported by the Commission's follow-up at the next annual MOR visit and share this information with the Commission. For pilot projects involving the Commission and RD, RD will share results from its follow up with HUD and the Commission.

3. Property Inspection Frequency

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

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

4. Property Inspection Protocol

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

5. Program Requirement Stipulations

In order to participate in the pilot program, certain program requirements must be waived so that property owners are not penalized due to pilot program requirements.

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 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 Agencies), 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 Agencies may be responsible for performing certain tasks that, under this MOU, may be delegated to another one of the Agencies.

6. Reporting format consistency

Reporting formats should be acceptable and usable among the Agencies for each Agencies' purpose. The Seattle Multifamily HUD Hub office will provide a copy of the REAC inspection report to the Commission and/or RD via email in PDF format when the report is released from REAC. REAC will send reports identified as part of this Pilot directly to Brenda Payette, who will be the Seattle Multifamily HUD Hub office REAC Coordinator for this pilot.

7. Information sharing commitment

The Agencies agree that owners will be provided a copy of the REAC inspection report within 10 days of the date of inspection, and the reports will be provided to other federal agencies at the same time. Property owners are expected to respond to the lead inspection agency and that agency agrees to share the owners' response with the other Agencies. Follow-up action the lead agency does not prevent the other Agencies from pursuing corrective measures.

8. Universe of programs/projects included in pilot

See Attachment A.

9. Commitment of staff resources to pilot.

The Agencies 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 HUD's Real Estate Assessment Center (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 the Commission 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 for their geographical region as listed below:

Region V (Ohio, Michigan, Minnesota, Wisconsin)

Deputy Regional Director
U.S. Department of Housing and Urban Development
77 W. Jackson Blvd., Suite 2608
Chicago, IL 60604
(312) 353-5680

Region X (Oregon, Washington)

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 Agencies 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 another party of the MOU. 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 parties, and shall remain in effect for at least one year or until the Agencies agree to amend or terminate it.

III. GENERAL TERMS

1. This agreement may only be amended by mutual written agreement of all the Agencies involved.
2. Any Agency may terminate the Agreement upon written notice to the other party, 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 Agencies 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 Agency 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 Washington 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:

Brenda L. Payette, Project Manager
U.S. Department of Housing & Urban Development
Northwest/Alaska Multifamily HUB
909 First Avenue, Suite 190,0AHMA
Seattle, WA 98104-1000
Tel: (206) 220-5201
Fax: (206) 220-5206
brenda.payette@hud.gov

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

Melissa A. Donahue, Acting Director
Asset Management & Compliance Division
Washington State Housing Finance Commission
1000 Second Avenue, Suite 2700
Seattle, WA 98104
Tel: (206) 287-4444
Fax: (206) 587-5113
melissa.donahue@wshfc.org

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

E. Tammy Repine, Housing Programs Director
Rural Development
U.S. Department of Agriculture
1835 Black Lake Blvd SW, Suite B
Olympia, Washington 98512
Tel: (360) 704-7767
Fax: (360) 704-7742
tammy.repine@wa.usda.gov

D. All notices under this MOU shall be in writing and served on the Agencies 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 Agencies hereto consent to the provisions of this MOU.

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BY AND BETWEEN THE
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AND THE WASHINGTON STATE HOUSING FINANCE COMMISSION AND THE
U.S. DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT

SIGNATURE PAGE

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: Mary E. McBride 11/15/2011
Mary McBride, Regional Administrator Date

WASHINGTON STATE HOUSING FINANCE COMMISSION

By: Kim Herman 11/15/2011
Kim Herman, Executive Director Date

U.S. DEPARTMENT OF AGRICULTURE/RURAL DEVELOPMENT

By: Mario Villanueva 11/15/11
Mario Villanueva, Washington State Director Date