

# **MEMORANDUM OF UNDERSTANDING**

**BY AND BETWEEN**

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

**AND**

**MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY**

**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), the Michigan State Housing Development Authority (MSHDA) and the United States Department of Agriculture, Rural Development (RD), in connection with a pilot program developed at the request of HUD, RD and the United States Department of the Treasury (Treasury), to establish a protocol for one federally-sponsored physical inspection of a property. The physical inspections under this pilot program will be performed at an agreed-upon interval, for certain properties with multiple sources of federal funding, specifically:

- HUD's Section 8 Project-Based Rental Assistance Program authorized under 42 U.S.C. §1437f ("PBRA");
- HUD's Multifamily Mortgage Insurance Program authorized under 12 U.S.C. §1713("FHA");
- HUD's Capital Advance under 12 U.S.C §1701q ("Section 202/811");
- 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.) ("HOME");
- MSHDA's low-income housing tax credit program authorized under Section 42 of the Internal Revenue Code ("LIHTC"); and
- RD's Section 515 Rural Rental Housing Program authorized under 42 U.S.C. §1485 ("515")

**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 (the "Aligned Properties") is attached;

**WHEREAS**, HUD, MSHDA and RD (each, an "Agency" and collectively, the "Agencies") recognize that they share mutual interests in ensuring that the public interest is better served by reducing the expense and inconvenience of multiple on-site physical inspections by different agencies, and enabling HUD, MSHDA and RD to timely share certain reports related to projects receiving funding from the abovementioned sources;

**NOW THEREFORE**, the Agencies 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 the Aligned Properties.

**B. MOU Parameters**

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

1. Lead Agency to Perform Inspections

The Lead Agency protocol shall be:

- a. For all Aligned Properties involving PBRA, FHA, and/or Section 202/811, HUD will be the Lead Agency and perform the inspections as provided under this MOU for any year in which a REAC inspection is due to be made.
- b. For all Aligned Properties involving PBRA, FHA and/or Section 202/811, MSHDA will be the Lead Agency and perform the inspections as provided under this MOU for all years in which a REAC inspection is not due.
- c. For Aligned Properties not involving PBRA, FHA or Section 202/811, but involving 515 and LIHTC, RD will be the Lead Agency and perform the inspections as provided under Treasury Regulation 1.42-5(c)(4)(ii) and the Memorandum of Understanding between MSHDA and RD effective November 1, 2005.
- d. For Aligned Properties involving only 515 and HOME, RD will be the Lead Agency and perform the inspections as provided under this MOU.
- e. For Aligned Properties involving only LIHTC and HOME, MSHDA will be the Lead Agency and perform the inspections as provided under this MOU.

The Lead Agency shall bear the costs and expenses for all inspections it conducts. If an Agency chooses to conduct an inspection when it is not the Lead Agency, it shall pay for the inspection.

## 2. Property Inspection Frequency

The Agencies agree that Aligned Properties shall 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 or to perform inspections on a more frequent basis, as determined appropriate by the Lead Agency, 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.

## 3. Property Inspection Protocol

The Agencies agree to use a mutually-acceptable inspection standard, or at a minimum, the Uniform Physical Condition Standards OMB Control Number 2502-0369 or the RD inspection, as appropriate. Further, the Agencies will agree on a sample size acceptable to all, in accordance with any waivers provided by the Agencies and Treasury.

## 4. Program Requirement Stipulations

To facilitate participation in the pilot program, certain program requirements must be waived so that property owners are not penalized as a result of compliance with pilot program requirements.

HUD's September 22, 2011 memorandum waives select HOME property standard requirements for grantees involved in the pilot program. Subject to the waiver, Aligned Properties funded under the MSHDA 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). The waiver is effective for the one-year period beginning November 1, 2011 and is conditioned on MSHDA's participation in the pilot program and submission of information to HUD regarding (1) the current property standards MSHDA 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.

HUD's Office of Multifamily Housing Programs' November 22, 2006 letter clarifies MSHDA's role for years when an inspection is conducted for HUD's Real Estate Assessment Center (REAC). Although MSHDA is required, in its role as Traditional Contract Administrator (TCA, to perform an annual physical inspection of each PBRA property (HUD Handbook 4350.4 Change 7, Section 2-20), in the years when REAC inspections are to be conducted, MSHDA does not need to perform an additional inspection of the property.

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 agencies taking part in the pilot require that vacant units be inspected without regard to the vacancy rate.

As a result, HUD stipulates that, during this term of this MOU, physical inspections performed by HUD or a HUD contractor on properties participating in the pilot program 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 of 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, Agencies may be responsible for performing certain tasks that, under this MOU, have been delegated to another Agency.

5. Reporting format consistency

Reporting formats will be acceptable and usable among all Agencies for each Agency's purpose.

6. Information sharing commitment

The Agencies agree to share information for the purpose of ongoing project oversight. The Agencies agree that owners will receive prompt written notice of the inspection results. Inspection reports will be provided to the owner and the pilot agencies in electronic .pdf format within approximately 10 working days, but no later than 30 calendar days, of the inspection. Property owners are expected to respond to the Lead Agency and that the Lead Agency agrees to share the owners' response with the other Agencies within approximately 10 working days of its receipt, but no later than 30 calendar days. The Lead Agency will pursue follow-up action as it deems appropriate or required. Follow-up action by the Lead Agency does not prevent the other agencies from pursuing corrective measures.

7. Universe of programs/projects included in pilot

See Attachment A.

8. Commitment of staff resources to pilot.

The Agencies agree to commit such staff and physical resources to the pilot effort as are needed to ensure full 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, MCL 15.231, *et seq*, 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) shall only be disclosed as follows:
  - a. REAC reports are HUD records; and are, in some circumstances, non-public information.
  - b. Federal Freedom of Information Act requests from the public that are made to RD or MSHDA 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

### **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 on any Agency. This MOU is an expression of intent only. Each of the Agencies acts as an independent party 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 Agencies, and shall remain in effect for one year unless all Agencies agree to amend the term or terminate this MOU pursuant to the General Terms provided below.

## **III. GENERAL TERMS**

1. This MOU may only be amended by mutual written agreement of all Agencies involved.

2. Any Agency may terminate the MOU upon written notice to the other Agencies, in which case the 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 Michigan and the federal laws of the United States of America. In the event of any conflict, federal law will prevail.

#### **IV. CONTACT PERSONS**

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

Mark Dominick, Supervisory Project Manager, Detroit Multifamily HUB  
U.S. Department of Housing & Urban Development  
477 Michigan Ave.  
Detroit, MI 48226  
mark.r.dominick@hud.gov

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

Sherri Davio, Compliance Manager  
Michigan State Housing Development Authority  
735 East Michigan Ave.  
Lansing, MI 48912  
davios@michigan.gov

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

Kelly Darland, Multifamily Housing Specialist  
U.S. Department of Agriculture, Rural Development  
3001 Coolidge Road, Suite 200  
East Lansing, MI 48823

**V. NOTICES AND AUTHORIZED SIGNATORIES**

A. The authorized signatory to this MOU and primary contact at HUD for notices is:

Antonio Riley, Regional Administrator, Region V  
U.S. Department of Housing & Urban Development  
77 W Jackson Blvd.  
Chicago, IL 60604  
Antonio.R.Riley@hud.gov

B. The authorized signatory to this MOU and the primary contacts at MSHDA for notices are:

Gary Heidel, Executive Director  
Christopher L. LaGrand, Acting Deputy Director  
Clarence L. Stone, Jr., Acting Director of Legal Affairs  
Michigan State Housing Development Authority  
735 East Michigan Ave.  
Lansing, MI 48912  
[heidelg@michigan.gov](mailto:heidelg@michigan.gov)  
[lagrandc@michigan.gov](mailto:lagrandc@michigan.gov)  
[stonec@michigan.gov](mailto:stonec@michigan.gov)

C. The authorized signatory to this MOU and primary contact at RD for notices is:

Ghulam Sumbal  
U.S. Department of Agriculture, Rural Development  
3001 Coolidge Road, Suite 200  
East Lansing, MI 48823  
Ghulam.Sumbal@mi.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).

**VI. APPROVALS**

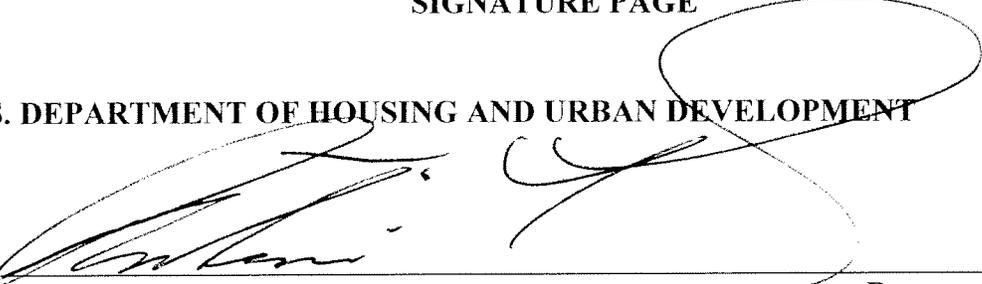
Now, therefore, the Agencies consent to the provisions of this MOU.

- SIGNATURE PAGE FOLLOWS -

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BY AND BETWEEN  
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
AND  
THE MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY  
AND  
THE U.S. DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT**

**SIGNATURE PAGE**

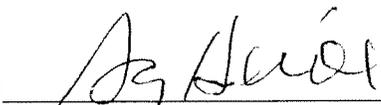
**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

By: 

**Antonio Riley  
Regional Administrator**

\_\_\_\_\_  
Date

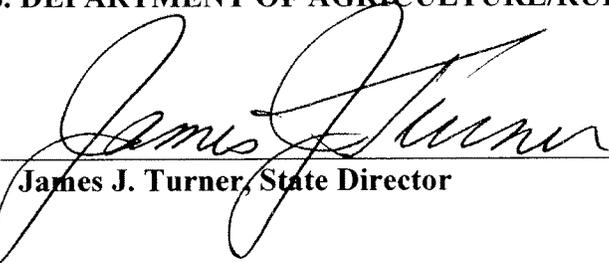
**MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY**

By: 

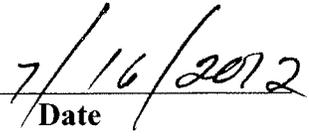
**Gary Heidel  
Executive Director**

\_\_\_\_\_  
Date

**U.S. DEPARTMENT OF AGRICULTURE/RURAL DEVELOPMENT - MICHIGAN**

By: 

**James J. Turner, State Director**

  
\_\_\_\_\_  
Date