

Federal Rental Alignment

Administrative Proposals

12/31/2011
Rental Policy Working Group



*November 14, 2011 signing event launching
the Minnesota Physical Inspections pilot*

This document is part of an ongoing effort to better align the operation of Federal rental policy across the Administration and is sponsored by the Rental Policy Working Group. The Rental Policy Working Group is composed of the White House Domestic Policy Council (DPC), National Economic Council (NEC), Office of Management and Budget (OMB), and the U.S. Departments of Housing and Urban Development (HUD), Agriculture (USDA), and the Treasury.

The specific areas of concern identified herein emerged from July 2010 and July 2011 stakeholder gatherings at the White House on inconsistent implementation of Federal rental policy.

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Physical Inspections

Lead Office: USDA-RD

Participating Offices: USDA-RD, HUD-MF, HUD-PIH, HUD-CPD, HUD-OGC, Treasury-IRS

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Issue Statement:

Today, a property that has multiple Federal funding sources may be subject to multiple physical inspections using multiple physical inspection standards. This proposal recommends that various Federal funding sources could reduce the frequency and number of inspections to no more than one Federally-sponsored visit to each property per year. A property that has multiple Federal funding sources is the target of this initiative and is considered a 'Combined Funding property.'¹

Proposed Alignment:

The solution to reducing the number of physical inspections required by Federal funding sources is to have one periodic and regularly-occurring Federal physical inspection acceptable to all Federal funding sources and the local and State agencies to which appropriate authority has been delegated. In order to achieve this alignment, the recommendation is to investigate a common physical condition inspection standard, a format of inspection results that can be utilized by each Federal funding source, an acceptable inspection frequency, and an acceptable sample size (number of units to be inspected). Achieving alignment in all these areas may not be possible for all programs, and alternatives are presented for consideration.

Although this alignment effort may be achievable in the global context, each department maintains different enforcement standards based on physical inspection findings, and enforcement standardization is not being proposed. Each agency still retains the ability to follow-up on any compliance issues with subsequent agency-specific inspections or actions, as permitted by loan or business agreements and Federal regulations.

Specific Actions to Effect Alignment: One periodically-scheduled physical inspection performed by one agency for the benefit of Federal agencies with a vested financial interest in that property will create efficiencies for the government, for property owners, and for residents of affordable housing whose apartments are subject to inspection. Alignment may be achieved by the following, which will be

¹ The entire universe of Combined Funding properties are those that combine any number of federally-sourced subsidy or tax credit programs, including LIHTC, USDA-RD programs and loan guarantees, as well as HUD programs like FHA insurance, CDBG, HOME, Choice Neighborhoods and PBRA (State and Federal level). Data related to a subset of this universe of properties (i.e., those properties for which the LIHTC is combined with any number of other Federal programs, including USDA-RD and HUD programs) is sourced from HUD-PD&R, at <http://lihtc.huduser.org>.

pursued in sequential order. (Once the results from the pilot program are in hand, a decision will be made whether alignment in these ways for HFAs should be promulgated as recommended best practices or in some stronger fashion.)

1. Alignment of inspection standards:
 - a. Use of the Uniform Physical Condition Standards (UPCS) protocol as the common inspection standard for on-going physical inspections on aligned properties for the LIHTC, HOME, Rural Development, Public Housing, project-based Section 8, Section 202 and Section 811 and FHA-insured Multifamily programs; or
 - b. Use of the Uniform Physical Condition Standards (UPCS) or local code, whichever is more stringent, as the protocol and the common inspection standard for on-going physical inspections on all properties that have units supported by HOME funds. The Housing Choice Voucher Program (HCV) uses Housing Quality Standards which differ from UPCS and local code;
2. Use of a statistically valid sample size from all assisted units in a building on aligned properties;
3. An established inspection frequency of not less than every three years, providing for the flexibility that each participating Federal, State, or local agency may need to do more inspections depending on inspection findings (e.g., risk-based scheduling of subsequent inspections) and non-compliance issues. A review at least every three years ensures prudent but not intrusive oversight. During the pilot, properties will still be inspected as frequently as required by law.

Current Status: One area where Congress has already initiated the standardization effort is the Housing and Economic Recovery Act of 2008 (HERA). The Act states that if the Low Income Housing Tax Credit (LIHTC) allocating agency (HFA) is already performing periodic inspections on a multifamily property with an FHA-insured mortgage, no such inspections need be done by the mortgagee. However, HUD has not yet completed its rule-making process for implementing this provision.

In addition, there is already some alignment between programs that could be formalized by this standardization action:

- For example, HUD's Real Estate Assessment Center (REAC) which covers HUD-MF² programs, and State housing finance agencies (HFAs) which perform physical inspections for the LIHTC program, do or can use UPCS as the basis for their inspections³.
- USDA-RD accepts third-party inspections, so alignment with HUD and LIHTC programs is relatively straightforward.
- Under § 1.42-5(d)(3) of the Income Tax Regulations, a State HFA is not required to do a physical inspection of a LIHTC property if the building is financed by USDA-RD under the Section 515 program, USDA-RD inspects the building, and the State HFA and USDA-RD enter an agreement for USDA-RD to notify the State HFA of the inspection results.

² Multifamily properties with FHA-insured mortgages.

³ HFAs may also use local health, safety, and building codes for the LIHTC program.

- Under § 1.42-5(d)(4), a State HFA agency may delegate inspection to an Authorized Delegate, which may include HUD or a HUD-approved inspector. The utilization of UPCS as an accepted standard for such projects is logical since it forms the basis for most inspections now. However, utilizing UPCS raw data does pose a problem for HUD programs that score projects under the REAC system, which is discussed more fully below.

Future Alignment: This alignment effort covers a multitude of programs with varying standards, sample sizes, and frequency requirements. Some programs are project-based, meaning they cover all units in all buildings of a development; and some programs are unit-based and cover only some units in some buildings of a development. Due to the differing scales of programs, alignment across every program may not be possible. However, discussions with implementing agencies that already have alignment initiatives underway indicate that individual State partner groups should agree among themselves on the lead inspection agency for an aligned property type. For example, in a HUD-MF property with Low Income Housing Tax Credits, State partners may agree that HUD take the lead in inspections while in a Rural Development property with Low Income Housing Tax Credits, State partners may agree that RD take the inspection lead. This flexibility is important given today’s economic climate and budgetary considerations. Agreement among the State partners is the key to a successful initiative. The following chart identifies the aligned property types to be included in the pilot and the protocol to be used:

Aligned Property Type	Protocol
HUD-MF/PIH properties	HUD/UPCS-REAC
Tax Credit properties	HFAs (using local code)/UPCS
Rural Development properties	USDA-RD
HUD-MF/PIH + Tax Credit properties	UPCS with uniform format
HUD-MF/PIH + USDA-RD	UPCS-REAC
Tax Credit + USDA-RD	UPCS or USDA-RD
HUD-MF/PIH + Tax Credit properties + USDA-RD	UPCS with uniform format
HOME + Tax Credit properties	
HOME + USDA-RD	UPCS or local code, whichever is more stringent
HOME + HUD-MF/PIH +/- Tax Credit +/- USDA-RD properties	UPCS or local code, whichever is more stringent

Generally, agencies will follow their own inspection protocols on non-aligned properties. For example, Rural Development will continue utilizing its current physical inspection protocol on non-aligned properties with only RD financing. However, if an RD property should receive the benefit of LIHTC or a project-based Section 8 subsidy contract, the physical inspection protocol on that property would change to the common standard, with inspections conducted by either the State HFA or HUD, as USDA-RD lacks the financial resources to train and certify field staff in the UPCS standard. In addition, given the relative remote location of many USDA-RD properties, it may not be practical to find other certified UPCS inspectors. This would ensure that the 'one scheduled physical inspection' solution is maintained.

In order to establish MOUs that designate an agency to take the lead as the inspecting agency on an aligned property type, there would need to be clear and comprehensive guidance for the field staff of Federal agencies and for the State HFAs.

Resource Estimate for Implementation:

Uniform Reporting Format: HUD's Public Housing, project-based Section 8-assisted housing, and Multifamily housing programs currently use a highly automated system to manage their inspections and processes, the Real Estate Assessment Center system (REAC). This system utilizes UPCS inspection standards at its base level, but also involves the interpretation of UPCS inspections into REAC-designated scores. This proposal will allow for options to be selected by the inspecting agency, yet due to the broad reach of UPCS and REAC, the Rental Policy Working Group suggests either of the following:

1. Use of the UPCS inspection standards by non-REAC inspectors that could be inputted into or "read" by HUD's REAC software system, so that the inspection results could be scored according to HUD's REAC protocol. The Team proposes adopting a common set of criteria that would ensure that all UPCS inspectors that inspect aligned properties are competent to perform the type of physical assessment required.
2. The REAC training and software protocols could be required of all UPCS inspections on Federally-assisted properties, i.e., whenever UPCS is used, it would be a REAC inspection. In order to support this adoption, HUD-REAC will make available training webcasts. This adaptation will enable the Rental Policy Working Group to test these alignments in the context of a pilot, where participation is voluntary.

Once the results from the pilot program are in hand, a decision will be made whether alignment in these ways for HFAs should be promulgated as recommended best practices or in some stronger fashion.

The Physical Inspection alignment proposal denotes that UPCS will be the common inspection standard, but does not require that the REAC system be used. This poses a challenge for HUD programs that utilize UPCS and other data to score a property under REAC. The uniform UPCS inspection format could be based on a paper inspection form or on an electronic (XML) form.

The costs associated with processing the inspection data and the costs of developing/modifying REAC's databases so that non-HUD related data can be managed separately would largely be upfront to HUD. HUD estimates that the development costs for this initiative are estimated at \$1,080,000 and could not

be completed until April 2013 at the earliest. Costs for an “all-REAC” alternative would incur to both HUD and stakeholders who pay for inspections, such as HFAs. System modification is a lesser cost than development of another input or processing method, and involves a shorter timeframe. In summary, the money/time cost of these alternatives is:

- Modify software/systems to expand the universe - \$120,000 / 18 months
- Create an alternative input/processing method - \$1,080,000 / 24 months

Establishing a common set of quality assurance criteria for all UPCS inspectors as an alternative to a REAC certification would have a cost associated with it, for which a funding source or sources would need to be identified. If the certification criteria mirror generally accepted criteria in the industry, however, this premium would be de minimis.

The average cost of a REAC inspection in FY2010 was \$396 per inspection. For costing purposes below, that figure has been rounded to \$400 per inspection.

The LIHTC program is today’s primary source of financing. For new or rehabilitated affordable housing units, the dollar-size of the LIHTC investment is several times that of other financing provided by HUD or USDA-Rural Development. Still, given today’s economic climate and the need for HFAs to consider budgetary constraints as much as the Federal government, it makes sense for the partners to come to a mutual agreement on use of staff resources to conduct these inspections. As of 2007, the universe of properties with LIHTC and some combination of other Federal funding sources is detailed below. Based on this information, the three agency entities in each State would have performed 22,546 separate inspections on 10,485 properties.

Number of Program Subsidies in addition to LIHTC	Properties	Total Inspections x Subsidy programs	Low-Income Units
Tax Credit Properties with No Subsidy	27,594		
1 Other Subsidy Program	9,177	18,354	645,924
2 Other Subsidy Programs	1,081	3,243	79,366
3 Other Subsidy Programs	187	748	12,066
4 Other Subsidy Programs	35	175	2,470
5 Other Subsidy Programs	4	20	386
6 Other Subsidy Programs	1	6	10
TOTALS	10,485	22,546	740,222

* Other subsidy programs include only Tax-Exempt Bonds, HOME, CDBG, HOPE VI, USDA 515, Project-Based Rental Assistance (Federal and State), and FHA insurance. Excludes properties no longer monitored for program compliance. Chart includes only properties placed into service through 2007. For more information see: <http://lihtc.huduser.org/>

Inspectors (Training or Contractors): State partners may elect to use their own staff to conduct these inspections or use outside contractors. Some agencies will choose to train inspectors in the UPCS

standard. There is no cost for this training; however, at this time, the course is offered by HUD only in Washington, DC as a one week course with a certification exam. All expenses (travel, lodging, and per diem) are solely borne by the participant. An online version of the training is still being developed but will not be available until 2012. Separately, there is no charge for use of the REAC software. The cost to participating HFAs would likely include any premium paid for inspections by contractor inspectors who have completed REAC training and who have invested in REAC compatible computer hardware.

On-Going Dedicated Staff Resources: Each agency involved in this implementation – not just the three departments at the Federal level but also Participating Jurisdictions (PJs) and State HFAs – will need to dedicate staff resources to serve as an agency liaison to ensure implementation and continuation of this proposal. These responsibilities would entail problem resolution, ensuring inspections are conducted in a timely manner, and that inspection report data is shared among the agencies within a specified timeframe. Although not a full-time job, it will be a commitment on the part of each agency to maintain the flow of communication and be alert for potential reporting problems. Ideally, agencies should identify two people per agency who have responsibility for this effort. It is estimated that these liaison duties may constitute 8-16 hours per month for most agencies.

Estimated Cost Savings to Owners, Operators, Developers, Investors, and/or Lenders:

Extrapolating from data compiled by PD&R, in 2007, an estimated 22,546 separate inspections took place on 10,485 properties with some combination of LIHTC and other Federal funding. Per industry estimates of the cost of a Federal physical inspection for their properties, at an estimated cost of foregone staff time of \$2000/inspection⁴, costs for 22,546 duplicative inspections could total up to \$45 million per year, nationally. By conducting aligned inspections on just LIHTC combined funding properties, savings realized within one year would be up to approximately \$24 million.

Additionally, agencies may choose to further pursue a future reduction in the frequency of inspections. Over three years, there is an estimated duplicative inspection cost of \$135 million. If the proposal to perform one Federal inspection every three years on each Combined Funding property (at a cost of \$24 million for an estimated, current national universe of 10,485 properties, per year) proceeds, it may result in savings of approximately \$111 million over three years from the current non-aligned costs, and an additional \$48 million over three years from an aligned inspection schedule of one inspection per year. Although these savings will not necessarily be reflected in reduced rents, they will lower expenses at the multifamily property.

Estimated Cost Savings for State, Local, and Federal Governments:

Utilizing the proposed inspection protocol will result in cost savings at the government level generally by a reduction in the number of inspections. These savings will be realized in the reduction of staff time out of the office and savings in travel expenses.

⁴ Estimates for cost of inspections based on assumptions made in the Housing Development Center study in Oregon

Extrapolating from data compiled by PD&R, in 2007, an estimated 22,546 separate inspections took place on 10,485 properties with some combination of LIHTC and other Federal funding. Based on the estimated Federal cost of approximately \$400 per inspection, the cost of duplicative inspections required on properties with multiple Federal funding sources is approximately \$9 million per year. Alignment of these inspections so that one inspection is performed on each combined funding property per year would result in approximate savings of \$4.8 million in one year. Additionally, if agencies choose to further pursue a future reduction in the frequency of inspections to once every three years, savings realized at the end of a three year period would be approximately \$22.2 million from the current non-aligned costs and \$9.6 from an aligned inspection schedule of one inspection per year.

A percentage of these properties will require more frequent inspections to ensure that corrective action was taken by the owner or to follow-up on compliance issues. In order to estimate this percentage, the Team considered that seven percent of properties scored less than 60 on recent REAC inspections and required a follow-up inspection. Assuming a similar percentage of owners would require re-inspections of their properties, it is estimated that this would reduce savings to governments by \$293,600 per year.

Challenges to Effecting Proposed Alignment:

Agreement from all HFAs: The LIHTC program has given substantial latitude to HFAs to carrying out the administration of the program. As such, implementation of the proposed standard protocol will require individual agreements with each HFA. In order to better understand the complexities that overall implementation may face, the Team is undertaking a pilot program with several HFAs to determine obstacles or complications in implementation of alignment.

Development of a Model Memorandum of Understanding: There are several versions of Memoranda of Understanding (MOU) that are currently in use among various agencies in several States, including the full-scale alignment of USDA-RD and State HFAs. The Team proposes development of a standard model that can be used with all States, HUD, and USDA-RD. Such an MOU would provide details on specific performance (format, sharing, timeliness, re-inspections, agency actions as a result of inspection findings) and remedies if data is not shared timely.

HOME Involvement: Additionally, when funding combined-funding rental projects with HOME dollars, HUD-CPD encourages HOME PJs to determine whether it can voluntarily align with the property inspection standards and (frequency) schedules for the project with other funders. In determining the feasibility of a voluntary alignment, the PJ must consider whether its ongoing property standard and maintenance requirements for HOME units meet or exceed the requirements of other funders, and remain cognizant of its obligation to repay HOME funds invested in noncompliant properties that cannot be remedied.

Privacy Issues: The Team suggests that it may be necessary to obtain a release from property owners to share the property data among agencies. The Team believes Federal agencies' general counsel(s) should make a determination whether this is needed.

Regulatory Challenges: The Team found two potential regulation challenges:

- The need for waivers of some current regulations for properties participating in the pilot and
- A regulatory challenge in selecting a representative sample of assisted units for inspection from properties that have multiple sources of Federal assistance supporting different units in a project.

The Team has identified waivers and stipulations that can be included as part of the MOU among State partners. The waivers from Treasury would be for inspection frequency, decoupling file review and physical inspection of units, and use of a statistical sample of the universe of units rather than a 20% sample. HUD stipulations would be limited to a procedure change for REAC to include vacant units in the sample selection, regardless of the vacancy rate. Vacant units are generally only included if the property's vacancy rate is 15% or greater. HUD's HOME Program would provide a process for pilot participants to apply for waivers on inspection frequency and sample size, contingent on their meeting the requirements to be granted such a waiver.

Not all units would be inspected and only a statistical sample would be employed. However, all units would be in the universe from which the sample is drawn. For vacant units selected as part of a LIHTC/HUD-MF inspection, score impacts will be manually adjusted so the owner is not negatively affected in any REAC score by the inclusion of vacant units.

Rural Development accepts third-party inspections on a regular basis and no needed waivers were identified. As the Team progresses through the pilot phase, if there are other actions taken as a result of using the proposed protocol, the State partners have agreed that the property will be held harmless by the funding agencies while the pilot is active. Most of these issues cannot be determined at this time, but would become evident as the process and pilots evolve.

Cost Challenges: Cost and timing challenges were outlined above under Resource Estimate for Implementation.

Procedural Challenges: In addition to the regulatory challenges described above, there may be a procedural challenge in selecting a representative sample of assisted units for inspection from properties that combine Federal funding sources that require differing processes for obtaining statistically valid samples. The Team recommends that a valid statistical sample of all units be used as the basis for selecting units for inspection. The Team believes consistent data sharing with the lead agency for the project's inspections will be required (in the MOUs and in practice) in order to ensure that a valid sample of each program's units are inspected.

Schedule for Alignment Implementation:

The Federal agencies have created a model MOU among State HFAs, HUD, and USDA to agree that State partners will determine the most appropriate partner to conduct physical inspections based on aligned property type and how inspection data information will be shared. The model MOU is to be shared with States selected for participation in the pilot. States will adapt the model MOU to develop an agreement that fits the circumstances of their particular State-level pilot.

During the time that the State-level MOUs are being developed, individual program guidance for participating agencies can be developed, which is generally limited to administrative changes. These could be accomplished according to each Department's regulatory schedule and should cover the period of time during which the pilot is active.

As the MOUs and individual agency guidance are finalized, the signing of the agreements at the State-level will mark the launch of the pilot program which will determine the viability of the proposal and identify implementation obstacles. Team members and points of contact at HFAs, HUD, and USDA-RD should adopt a short-term agreement on pilot program parameters. The Team proposes a model agreement to be used by all pilot States. The model would be similar to agreements already in place in some States among participating entities. The signing of the first MOU took place in early November, 2011 with additional signings expected to follow shortly thereafter. For inspections, the pilot should cover a twelve month period to accommodate physical inspection schedules which are generally weather-impacted. Reporting on pilot progress would take place at three-month intervals. During the pilot period, the agencies' regulatory changes could be completed. Following the end of the six-month reporting period, the Team expects a three-month period in which program guidance would be drafted for consideration by all field staff for HFAs, HUD, and USDA. Finalization of the guidance would come at the end of the pilot period.

Once the MOU among Federal agencies and participating HFAs has been signed, several programs can begin alignment implementation immediately:

- HUD-MF/PIH + USDA-RD
- LIHTC + USDA-RD
- HOME + LIHTC properties

On a longer-term implementation schedule, the following programs can be more properly aligned over a period of time:

- HOME + HUD-MF/PIH
- HUD-MF/PIH + LIHTC properties
- HUD-MF/PIH + LIHTC properties require approximately 24 months to be aligned on one format for UPCS inspection that can be used by all programs; however, implementation can begin during the pilot period to test the pilot parameters.

Income Reporting and Definitions

Lead Office: Treasury-IRS

Participating Offices: Treasury-IRS, USDA-RD, HUD-MF, HUD-PIH, HUD-CPD

Prepared by: Michael Novey, Treasury-IRS

Issue Statement:

Various Federal programs to support affordable housing have slightly differing requirements for income certifications and require property managers to submit information on different forms. This may lead to inconsistencies in determinations of income and rents. In addition, property managers and owners sometimes submit income information through different processes. This may lead to inconsistencies and/or add to owners' or governmental agencies' administrative burden.

Evaluation of Program Differences:

1. In general, sections 42(g) and 142(d) of the Internal Revenue Code (Code) require income determinations for purposes of the Low Income Housing Tax Credit (LIHTC) to follow the determinations in HUD's Section 8 program.⁵ That is, both programs use identical definitions for amounts that are included in—or excluded from—gross income. There is, however, one significant difference, which concerns basic military housing allowances in certain locations.⁶
2. Even when various programs employ the same theoretical definitions of income, the income amounts actually determined may vary because of differential access to relevant data. HUD programs may use HUD's Enterprise Income Verification system (EIV) for access to data from the Department of Health and Human Services' (HHS) data base of new hires. USDA and IRS, however, are statutorily prevented from using this information.⁷

⁵ Section 142(d)(2)(B) provides in relevant part, "The income of individuals and area median gross income shall be determined by the Secretary [of the Treasury or the Secretary's delegate] in a manner consistent with the determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937"

⁶ Under section 142(d)(2)(B)(ii) of the Code, for determinations made before January 1, 2012, certain basic military housing allowances are not taken into account in determining a tenant's income. This exclusion does not apply for purposes of programs under Section 8 of the Housing Act.

A further statutory difference relates not to ascertaining a tenant's income but to determinations of area median gross income for property located in certain rural areas. See section 42(i)(8) of the Code.

⁷ Legislation would be needed for the IRS and USDA to have access to information from the new-hires data base. By reducing differential availability of relevant data, this access would reduce the extent to which different Federal programs using the same definition of income nevertheless reach different conclusions about the income of the same tenant.

3. In addition, even if different programs have the same definitions of income and access to the same information, there may be variations in the ways that the programs use those definitions. In particular⁸—
 - Program differences concerning annual recertification may sometimes lead to multiple recertifications in the same calendar year. Individuals who are HUD or RD compliant may have been living in a building for several years at a time when the building owner receives LIHTC support for rehabilitation. The LIHTC program provides ‘grandfathering’ for tenants whose circumstances have improved since their initial LIHTC qualification, but the Code does not extend grandfathering to the tenants’ status under other Federal affordable-housing programs. Thus, even though assessment of the tenants’ current income is the same as that used for HUD or USDA-RD purposes, the practical consequences may differ drastically. By not recognizing HUD and USDA-RD ‘grandfathering,’ the LIHTC program treats units that these tenants occupy as not being low-income units.⁹
 - Even programs that directly or indirectly use HUD data regarding Area Median Income may make their own annual data updates applicable with effective dates that differ from HUD’s and from each other’s. Also, under USDA procedures, median income for an area does not decrease, even if new HUD data show such a reduction.
4. Developers operating in multiple States encounter a number of significant annoyances that impose additional costs. The LIHTC program sets general substantive and procedural requirements with which State HFAs have to comply, but many of the implementing details are left to the States’ discretion and may not be consistently interpreted. Some stakeholders believe that this flexibility is one of the strengths of the LIHTC program. Others, however, contend that the absence of cohesive, specific, mandatory Federal guidance means that multi-State developers incur extra costs for, among other items, software and staff training. Following are key examples of these differences:
 - Some States compute amounts of income to the nearest penny, while others round to the nearest dollar. HUD-MF, HUD-PIH, and USDA-RD follow the latter practice. (Some believe

⁸ There is also a programmatic difference between Federal programs that do recertifications to check for compliance and those that use income for setting subsidy levels. For example, Section 8 of the Housing Act provides for monthly rent supplements. In order for these supplements to be adjusted for short-term variations in the tenant’s economic circumstances, more-frequent-than-annual adjustments to income may be required, based on “interim” certifications. Adjustments of this sort would have no role to play under section 42. Because this difference responds to basic differences between the programs, alignment as to timing would be inappropriate.

⁹ Preliminary inquiry suggests that legislation may be needed in order for the LIHTC program to “grandfather” pre-existing tenants who qualify under a HUD or USDA-RD program but who are over-income (or otherwise not qualified) at the beginning of LIHTC rehabilitation. Any such grandfathering based on status under a non-LIHTC program could be specifically focused on the terms and timing of the HUD or USDA-RD qualification. Alignment of this sort, however, is unlikely to extend beyond the continuing tenants that would have been qualified for LIHTC at the time that they first qualified for some other Federal affordable-housing program.

that greater precision is appropriate for LIHTC computations, which produce a binary result (eligible vs. ineligible), than for computations that determine a monthly subsidy.)

- Varying relation codes are used to communicate to the owner's software the role that an individual may play in a (potential) resident family. This variation seems to be only partially due to the fact that only HUD can access HHS new-hires data.
- For LIHTC purposes, owners are required only to retain sufficient documentation to show that a tenant is qualified. As a result, States vary in the volume of data (for example, underlying worksheets of components of a reported total) for which they require reporting. HUD, with its EIV access, requires full detail of income and assets.
- For purposes of the LIHTC requirements, States vary in some of the details of income computation (e.g., whether to include a portion of the earned income of a family member that turns 18 during the coming year). This may be due to HFA confusion about how this circumstance is treated for HUD Section 8 purposes.

Proposed Alignment:

1. Recertification requirements will be addressed with an eye to ending the problems caused when multiple sources of Federal benefits trigger multiple recertification events in a single year.
2. Differences in Member Relation Codes across funding programs will be reduced or eliminated, and the team will support the development of common Tenant Income Certification (TIC) forms (such as those under development by the National Council of State Housing Agencies) in order to align varying definitions of income. Stakeholders have been vigorous and unanimous in stressing that the most important alignment improvement related to income determination would be the development of a common TIC form. Complete alignment of forms, however, may not be possible for programs whose access to HHS data is unequal.
3. IRS will determine whether State-to-State variability can be reduced consistent with a statute that promotes flexibility for the States. Areas that merit particular attention are rounding to the penny vs. the dollar and diverse treatment of individuals within a household who reach the age of majority. HUD has already provided guidance on these topics.

Specific Actions to Effect Alignment:

1. Interim certification alignment

The promotion of a single annual recertification can occur to the extent that flexibility in program recertification requirements allows owners to sync and coordinate their recertifications to satisfy the requirements of all programs at once.

- Under existing program rules, a shared recertification date can be set to accommodate the least flexible of the programs that apply to the household, provided that the shared date does not cause the time between recertifications for any program to exceed one year. If some circumstance requires a Federal program to perform a new-qualification certification,

the owner/agent may achieve synchronization of recertification dates either by accelerating the recertifications for that tenant under other programs or by accelerating the next recertification under that program to match the others. Mass recertification dates might be permitted for all programs.

2. Further alignment will be achieved through reduced variability in Member Relation Codes. The development of a single Tenant Income Certification (TIC) form would be an important component of aligning relation codes across USDA, HUD-PIH, and HUD-MF and can be achieved preliminarily through the support of a “model” TIC that promotes such alignment. NCHSA has already begun the process of updating their existing “model” TIC that State HFAs would adopt and that could be used by non-LIHTC Federal programs. The team will support their work as necessary to achieve greater alignment in the forms used by HFAs for recertification that will meet the needs of all agencies while still maintaining the discretion and input of the State HFAs in the process through their involvement with NCHSA.

3. State-to-State variability

Much of the State-to-State variability seen in tenant income certification can be addressed through more intensive education and outreach for States regarding the rules for addressing unique tenant circumstances, such as what happens when a member of the household turns 18 or the extent to which rounding to the nearest dollar is acceptable.

Challenges to Effecting Proposed Alignment:

- Some Federal efforts to increase alignment among the various States may require more resources than can be justified by an outcome that would still tolerate substantial State-to-State variation.

Financial Reporting

Lead Office: USDA-RD (Short term alignment), HUD-MF (Long term alignment)

Participating Offices: HUD-MF, USDA-RD, Treasury-IRS, HUD-PIH, HUD-CPD

Prepared by: Megan Thibos, HUD-PIH, updated by Victoria Laws, HUD-MF, Scott Loveday, HUD-REAC, and Diane Larson, USDA-RD

Issue Statement:

Properties with funding from different Federal programs may have to submit duplicative financial statements and have multiple audits prepared according to different audit standards. Owners with large portfolios, including high-capacity mission-driven owners, also incur significant and unnecessary staff and infrastructure costs when properties across their portfolio are required to file financial reports in different formats and submit audits according to different guidelines.

Proposed Alignment:

1. USDA-RD & HUD-MULTIFAMILY ALIGNMENT ON JOINTLY SUBSIDIZED PROPERTIES

Approximately 1,200 properties representing 28,000 units are jointly subsidized by USDA and HUD-MF, and are currently subject to duplicative and overlapping financial reporting requirements. These properties were constructed using USDA Section 515 (of the Housing Act of 1949) financing, but the ongoing project-based rental assistance subsidy is provided by HUD-MF in the form of a Housing Assistance Payment (HAP). The Team proposes to align the majority of conflicting and/or overlapping requirements for this select group of properties through specific actions taken by USDA-RD and HUD-MF to modify requirements or exempt these properties from certain requirements.

2. MULTI-PROGRAM STANDARDIZATION OF FINANCIAL REPORTING REQUIREMENTS

Currently, HUD-MF, USDA-RD, and the State HFAs that administer Treasury's Low Income Housing Tax Credit (LIHTC) program all require owners to submit financial statements using some type of agency-specified chart of accounts (or specific line items).¹⁰ Each funding agency

¹⁰ The decision was made to exclude HUD-PIH from alignment implementation because (1) public housing is operated and regulated significantly differently from other types of federally-subsidized housing, (2) the universe of entities that operate both public housing and other types of Federally-subsidized housing is comparatively small, (3) those entities that do operate both public housing and other types of Federally-subsidized housing do so in a very 'siloed' fashion, and (4) stakeholders did not express significant complaints over lack of harmonization between public housing and other programs. The decision was made to exclude HUD-CPD from alignment implementation because HUD-CPD does not require submission of financial statements under its HOME program, and stakeholders had few complaints about harmonization between HOME and other programs, reporting that the

also requires many (although not all) owners to obtain an audit of their financial statements that has been prepared according to agency-specified audit guidelines. The Team proposes to (a) create a unified chart of accounts acceptable to both HUD-MF and USDA-RD; (b) create a unified set of audit guidelines acceptable to both HUD-MF and USDA-RD; and (c) actively encourage State HFAs to adopt the new Federal standards for chart of accounts and audit guidelines. This proposal is significantly more ambitious and will require more time and resources than Proposal 1; however, it is believed to be accomplishable and would produce significant cost savings to owners.

Specific Actions to Effect Alignment:

1. USDA-RD & HUD-MULTIFAMILY ALIGNMENT ON JOINTLY SUBSIDIZED PROPERTIES

a. Align eligibility for exemption from audited financial statements requirement

HUD-MF will pursue an exemption threshold for audited financial statements to align with USDA-RD. This will benefit not only the owners of jointly subsidized properties that fall under the threshold for audited financial statements, and properties constructed using USDA Section 515, but also owners that manage portfolios with different properties subsidized by the two agencies. This policy change will actually produce alignment on this specific issue across the entire HUD-MF and USDA-RD portfolio, not just the jointly subsidized properties. In the short term, for exempted properties and subject to the approval of HUD's Office of Housing, HUD will agree to accept hard copies of the USDA required financial reports (RD Form 3560-7 and RD Form 3560-10, including the AUP requirements for 16-23 unit properties).

b. USDA defers to HUD-MF on audit guidelines

For jointly subsidized properties that receive HUD audits, USDA will accept the HUD audits and relinquishes the USDA "Agreed Upon Procedure" (AUP) requirement and RD Form 3560-10. However, for jointly subsidized properties that are not yet required by HUD to submit audited financial statements, USDA will still require them. USDA currently requires AUP – a specific set of criteria a CPA must investigate and opine on – for all properties with 16 or more units.¹¹ For these properties, the AUP serves as a "light" audit. For properties with 24 or more units, which are required to submit fully audited financial statements, the AUP is required as a supplement to standard audit

local jurisdictions that administer the HOME program are primarily concerned with financial reporting during construction rather than ongoing financial reporting.

¹¹ Non profit or local government-owned properties receiving more than \$500,000 in combined Federal assistance must submit an audit to OMB in compliance with the Single Audit Act, OMB circular A133. Those properties are exempt from USDA's AUP requirement, and instead submit a copy of their OMB A-133 audit plus the HUD Uniform Chart of Accounts as a supplement to HUD, and a copy of the OMB A-133 audit to USDA-RD. This policy would remain unchanged under Proposal 1.

procedures. In light of the fact that HUD-MF is providing the ongoing rental assistance/operating subsidy on these properties, USDA-RD will consider an exemption for jointly subsidized properties from their AUP requirement and from most USDA-specified audit requirements. In this case, USDA-RD would agree to accept a copy of the HUD-specified audited financials, in hard copy directly from the borrower if necessary.

c. *Financial statement format requirements*

USDA properties will use the HUD FASS MF system "as is", instead of paper or other USDA systems, to electronically submit their financial statement data. The data can be audited or unaudited depending on the size of the entity or the risk they pose to HUD. Analysis shows that the variations between HUD and USDA are minor and that the HUD FASS MF system can capture nearly all of the USDA financial data, can do it electronically, and can provide automated compliance edits. However, in order to implement this recommendation, the following information technology limitations would need to be overcome: 1) HUD needs to determine how to open access to its system to allow data entry by USDA program recipients; and 2) HUD needs to develop a method to allow USDA to receive the results of data collection and compliance edits.

2. **MULTI-PROGRAM STANDARDIZATION OF FINANCIAL REPORTING REQUIREMENTS**

To address remaining duplication in financial reporting, the team proposes to create cross-agency standardization on both (a) the format of financial statements (also known as chart of accounts or supplemental schedules) and (b) the audit guidelines governing the preparation of audited financial statements (for those properties that must submit audited financials). (See Appendix 1 for a summary of program requirements.)

Although HFAs are a significant source of conflicting requirements and owner frustration, the team recommends concentrating on producing a Federal standard acceptable to both HUD-MF and USDA-RD, with consultation from key HFAs and/or the National Council of State Housing Agencies (NCSHA) to ensure that the Federal standard has a good chance of being adopted by HFAs. Similarly, it would be ideal if the Federal standards for financial statement format and audit guidelines were also acceptable to major investors, lenders, and syndicators so that properties would only have to submit *one* audit. The interagency working groups established under this Proposal should also consult with key members of these industries early on in the process to assess whether these private sector partners would be amenable to accepting this Federal standard, and what key features the Federal standard would need to include in order to facilitate adoption by the private sector.

Subject to a detailed assessment of the cost, method, and timeframe for proceeding relative to existing resources, HUD and USDA would implement the following changes to the FASS MF system that benefit both agencies:

- a. USDA-RD currently collects budget information simultaneously with financial information which allows the agency to be better informed in regards to the financial management of the property. Recognizing the advantages of this practice, HUD will modify its system to collect budget information (for those projects required to submit budgets) simultaneously with financial information like USDA does now.
- b. HUD will exempt properties which have small HUD investment from audits to match USDA's practice. This does not mean that small properties will be exempt from financial reporting. All owners will submit financial statements on their properties; they will only be exempt from audits on those statements.

Resource Estimate for Implementation:

1. USDA-RD & HUD-MULTIFAMILY ALIGNMENT ON JOINTLY SUBSIDIZED PROPERTIES

No additional resources should be necessary. The program staff from USDA and HUD-MF should be able to implement the policy changes in the course of their regular duties. Co-project leads (one from HUD-MF, one from USDA) should be appointed to keep each other up to date on their respective agency's project and coordinate public release of information.

2. MULTI-PROGRAM STANDARDIZATION OF FINANCIAL REPORTING REQUIREMENTS

This proposal will require significant staff time and a modest amount of travel funding to bring the relevant stakeholders together for in-person meetings. Each working group (financial statement formats, audit guidelines) will require a facilitator or project lead. In order to produce results quickly, that project lead should be given temporary relief from his/her regular duties to focus on the project full-time or nearly full-time. Other working group members should be given partial relief of their regular duties so as to give the project the deep and focused attention it will require.

The proposal would require IT funding to make the necessary adjustments to the databases. The IT staff in HUD-REAC estimates that making the required changes to its outdated database could cost in the vicinity of \$400,000 to \$500,000. The IT staff at USDA-RD has suggested that depending on how extensive the changes are, the cost could be as little as \$200,000 or as much as \$800,000.

Estimated Cost Savings for Owners, Operators, Developers, Investors, and/or Lenders:

1. USDA-RD & HUD-MULTIFAMILY ALIGNMENT ON JOINTLY SUBSIDIZED PROPERTIES

The owners of approximately 1,100 jointly subsidized projects with 16 units or more should save approximately \$3,000 each from not having to do the USDA audit and/or AUP. This would amount to around \$3.3 million per year. Approximately 300 projects with 23 units or less could save as much as \$10,000 each, or as much as \$3 million total, from not having to complete a HUD audit. Total savings from the two parts of the proposal could total as much as \$6.3 million per year.

2. MULTI-PROGRAM STANDARDIZATION OF FINANCIAL REPORTING REQUIREMENTS

With HFA participation, standardization of audit guides could save approximately 4,800 properties as much as \$3,000 each, or as much as \$14.5 million per year.

Stakeholders suggest that, particularly for high-capacity owners, the dollar savings in staff costs of standardization on both audit guides and financial statement submission formats could exceed the dollar savings on audit costs.

Estimated Cost Savings for State, Local, and Federal Government:

1. USDA-RD & HUD-MULTIFAMILY ALIGNMENT ON JOINTLY SUBSIDIZED PROPERTIES

Savings from this alignment primarily accrue to owners.

2. MULTI-PROGRAM STANDARDIZATION OF FINANCIAL REPORTING REQUIREMENTS

Savings to the Federal government from standardization will be somewhat difficult to pinpoint, but there may be staff efficiencies and administration efficiencies when separate entities of the Federal government act in tandem. As HFAs sign up, the savings to them could be considerable as they will not need to expend staff resources on maintaining their own standards.

Schedule for Alignment Implementation:

1. USDA-RD & HUD-MULTIFAMILY ALIGNMENT ON JOINTLY SUBSIDIZED PROPERTIES

Action	Timing (Start – End)
Decision to proceed	September 2011
MOU executed with USDA exempting HUD-subsidized properties from AUP	October 2011 – January 2012
Policy issued changing audit exemption threshold	January 2012
Implementation of new audit guidelines	January 2012 – March 2012
Implementation of new financial submission formats	Will depend on completion of Electronic Systems Alignment

2. MULTI-PROGRAM STANDARDIZATION OF FINANCIAL REPORTING REQUIREMENTS

Action	Timing (Start – End)
Decision to proceed	September 2011
Convening of financial statement format and audit guideline work groups	November 2011 – December 2011
Approval of prototypes created by work groups	January 2012
Implementation of new audit guidelines	February 2012 – April 2012
Implementation of new financial submission formats	Will depend on completion of Electronic Systems Alignment

Challenges to Effecting Proposed Alignment:

1. **USDA-RD & HUD-MULTIFAMILY ALIGNMENT ON JOINTLY SUBSIDIZED PROPERTIES**
 - a. The USDA OIG will need to opine on the proposal to exempt jointly subsidized properties from the AUP and USDA-specific audit procedures.
 - b. HUD OIG will also be consulted on the corresponding exemption threshold to be adopted in alignment with USDA-RD.
2. **MULTI-PROGRAM STANDARDIZATION OF FINANCIAL REPORTING REQUIREMENTS**
 - a. Each program has invested time and effort in developing its requirements and may be reluctant to relinquish them.
 - b. While standardization between HUD-MF and USDA-RD will be beneficial to owners, to achieve the full potential of this effort the Team must coordinate with HFAs. However, negotiating with all 50+ HFAs as full stakeholders from the beginning would be challenging. Thus, the Team must proceed with HUD-MF and USDA-RD standardization in such a manner as to encourage the eventual adoption of our standard by the HFAs, through pilot implementation and working with industry groups such as NCSHA.
 - c. Syndicators and lenders may already be imposing financial reporting or auditing requirements. The working groups need to determine how to take these requirements into consideration.

Common Energy Efficiency Requirements

Lead Office: HUD

Participating Offices: DOE, Treasury-IRS, USDA-RD, EPA, HUD-OSHC, HUD-MFH, HUD-CPD, HUD-PIH

Prepared by: Stockton Williams, DOE and Rachel Kirby, HUD-OSHC, Updated by Michael Freedberg, HUD-OSHC

Issue Statement

Today, the Federal programs that help produce and preserve rental housing vary widely in terms of their energy efficiency requirements. While some variety is appropriate, given that the Federal government provides various forms and levels of assistance to properties along a continuum of physical and financial condition, there is an opportunity to achieve greater alignment and in the process maximize the potential for energy savings in rental housing, generating significant financial savings.

The Common Energy Efficiency Requirements (EE) Team recognizes the challenges in implementing Federal energy requirements for rental housing. Building codes are largely a State and local responsibility. Code compliance and enforcement is highly uneven across the country. And the limited data available suggests that stronger energy requirements tend to increase development/rehabilitation costs. Having said that, HUD and USDA, recognizing the economic as well as energy benefits, have already begun to significantly strengthen and align energy requirements in Federal rental housing programs. Building on that progress and extending it to cover more rental housing production and rehabilitation programs has the potential to save time, reduce duplicative efforts, and clarify Federal policy intent for agencies and the end-users of their programs, while supporting progress on important energy efficiency goals of the Administration. HUD, USDA, and the Department of Energy (DOE) will work closely together on implementation.

Proposed Alignment

A five-part framework is recommended:

1. **New construction and/or gut rehabilitation with Federal grants**

New construction or gut rehabilitation¹² of rental housing supported with *Federal grants*¹³ should meet or exceed the current requirements for Energy Star for New Homes or Energy Star

¹² For the purposes of these recommendations, gut rehabilitation means the total removal and replacement of all interior (non-structural) systems, equipment, components, or features of the existing structure, and may include modifications of the exterior of the structure (Housing Trust Fund Proposed Rule, 24 CFR 92.741).

¹³ Excludes Community Development Block Grant (CDBG) formula grants and related programs.

for Multifamily High Rise,¹⁴ or Builder's Challenge Quality Criteria;¹⁵ Note that there are certain provisions of Energy Star for New Homes Version 3.0 that will not apply to rehabilitation projects; until EPA has established guidelines for gut rehabilitation under Energy Star Version 3.0, Version 3.0 shall not apply to gut rehabilitation.

2. Other new construction or gut rehabilitation

New construction or gut rehabilitation of rental housing supported with *Federal insurance, direct loans, loan guarantees,*¹⁶ or *public housing capital and operating funds* should meet or exceed the most current applicable International Energy Conservation Code (IECC) or ASHRAE 90.1 standard that is deemed feasible to apply on a nationwide basis.¹⁷ The current applicable codes are the 2006 International Energy Conservation Code (IECC) and American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) 90.1-2004;¹⁸

3. Substantial Rehabilitation

Substantial rehabilitation¹⁹ of rental housing is encouraged to implement such energy improvements that a new Capital Needs Assessment (CNA) template tool as recommended by the Capital Needs Assessment Work Team determines are financially feasible for the property;²⁰

¹⁴ For all single-family or low-rise multifamily projects, Energy Star for Homes shall apply. Version 2.0 applies to projects which submitted applications prior to April 1, 2011; Version 2.5 to projects which applied for funding between April 1 and December 31, 2011; and Version 3.0 for projects submitting applications after January 1, 2012. Homes built to Version 3.0 guidelines will be at least 20% more energy efficient than homes built to the 2009 IECC. Energy Star Multifamily High Rise (MFHR) guidelines shall apply to Type 1 or Type 2 multifamily buildings specified at http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.nh_multifamily_highrise; these are designed to be at least 15% more energy efficient than ASHRAE 90.1-2007. For both low-rise and high rise, buildings may pursue a "performance path" or "prescriptive path" to meet the Energy Star guidelines.

¹⁵ The Builders Challenge Quality Criteria for single-family and low-rise multifamily are a mix of prescriptive and performance-based requirements that must achieve a HERS index of 70 or lower. Both Builder Challenge and Energy Star qualified properties should comply with the underlying IECC or ASHRAE code requirements.

¹⁶ Does not include Loan Guarantees under Section 108 of the Housing and Community Development Act of 1974.

¹⁷ Minimum requirements of the Energy Independence and Security Act of 2007 (EISA) are currently set at the 2006 International Energy Conservation Code (IECC) for single family or low-rise multifamily, and ASHRAE 90.1-2004 for high-rise multifamily construction. EISA also requires the Secretaries of HUD and USDA to adopt more recent successor IECC and ASHRAE codes provided that these standards do not adversely impact the affordability or availability of covered housing.

¹⁸ Public housing capital and operating funds included in this category do not include HOPE VI new construction - which is covered under Category 1, "New construction or gut rehabilitation with federal grants."

¹⁹ "Substantial rehabilitation" means repairs, replacements, and improvements that: 1) Involve the replacement of two or more major building components, or 2) the cost of which exceeds either: a) 15 percent of the property's replacement cost; or b) \$6,500 per dwelling unit (HUD Handbook 4460.1, 4-2, *Architectural Analysis and Inspections for Project Mortgage Insurance*, Chapter 4, Rehabilitation). Project-based Section 8 Substantial

4. Moderate or Other Rehabilitation

Moderate or other rehabilitation,²¹ minor rehabilitation, capital improvements, or modernization of rental housing may also implement measures recommended in a CNA, but should at minimum replace systems and appliances as needed with the most energy- and water-efficient options, including Energy Star, WaterSense, or FEMP-designated products and appliances, to the extent they are financially feasible.²²

5. Energy Retrofits

Energy retrofits are specifically targeted towards promoting energy and water conservation. They are custom-designed to implement a package of water and Energy Conservation Measures (ECMs) that are deemed “cost-effective” for each property; no changes are required for these programs. Examples include DOE’s Weatherization Assistance Program (WAP) and Energy Performance Contracting (EPC) in public housing.

Notes on Specific Programs

The Low Income Housing Tax Credit (LIHTC), Weatherization Assistance Program (WAP), and Public Housing Operating and Capital Fund programs are treated differently for the purpose of these recommendations. The EE Team recommends the following with respect to these programs:

Low Income Housing Tax Credits

For LIHTC, a qualified allocation plan must contain a variety of selection criteria. These criteria include “the energy efficiency of the project.” 26 USC 42(m)(1)(C)(ix). In light of the alignment effort described in this document, Treasury will work with NCHSA to determine how States are administering this statutory energy-efficiency criterion, and will consider appropriate follow up action.

Weatherization Assistance Program

Rehabilitation as defined at 24 CFR 883.302 may include gut rehabilitation; if so, it would be covered under Category 2, “Other New Construction or Gut Rehabilitation.”

²⁰ The CNA tool to be developed by Capital Needs Assessment Work Team will remain optional for HFAs, for LIHTC properties, and for HOME Participating Jurisdictions. For public housing, HUD-PIH is developing a Physical Needs Assessment (PNA), which is closely aligned with the proposed CNA.

²¹ “Moderate rehabilitation” means rehabilitation involving a minimum expenditure of \$3,000 for a unit, to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below those standards. (Section 8 Moderate Rehabilitation Program, 24 CFR 882.802).

²² Pending further development of the template tool recommended by the Capital Needs Assessment Work Team, some properties in the moderate rehabilitation category may be able to utilize a CNA as well (e.g. HOME).

For WAP, no change should be made. Under the WAP regulations, grantees are required to hold average costs to a defined level and only perform a limited group of energy interventions. The measure of cost effectiveness for weatherization efforts is described at 10 CFR 440.21(d), which States that weatherization measures “must result in energy cost savings over the lifetime of the measure(s), discounted to present value, that equal or exceed the cost of materials, [and] installation.” Thus, WAP already has a specified regulatory regime for establishing energy requirements; the regime imposes a “cost effectiveness test,” to help ensure that the maximum level of efficiency is achieved with available funds. The EE Team believes that this is an appropriate framework for WAP.

Public Housing Capital and Operating Funds

For Public Housing Capital and Operating Funds, HUD-PIH is strengthening its requirements or guidance for capital planning for energy efficient substantially or moderately rehabilitated properties or continuing capital improvements. HUD has issued a proposed rule describing a Physical Needs Assessment (PNA) which, if implemented will assist Public Housing Authorities (PHAs) in incorporating energy efficiency measures in their capital plans. As noted in the CNA team report, the public housing PNA “is anticipated to be very closely aligned with the CNA:”

NOTE: The major difference between the two products relates to the level of complexity and associated burden, and the level of control the agency has in the process. The HUD-PIH PNA will be completed by PHAs every five years and updated annually by over 3,100 PHAs, including some 2,100 small PHAs. However, the CNA tool is intended to be transactional, and thus would be undertaken by a much smaller subset of entities much less frequently, potentially only once every 15 or 20 years. The CNA tool will be publicly available and is expected to be a useful tool for managers of large affordable housing portfolios for capital planning or transactional purposes.

The EE Team notes that PHAs are required to conduct energy audits of their projects at least every five years and incorporate the most cost-effective measures into their capital improvement plans, including insulation, weather stripping, storm doors and windows, flow restrictors for hot water lines, improved boiler controls, solar energy systems, and installation of individual utility meters. HUD plans to publish more specific guidance for PHAs on implementing the energy audit as an integral component of the PNA.

PHAs are also required to choose Energy Star or FEMP-designated products, unless the products are not cost effective (essentially the same as recommendation 4 above). HUD has issued a proposed rule for the Public Housing Capital Fund that clarifies and strengthens these provisions (RIN-2577-AC50).

HOME

Because the HOME program provides formula grants to State and local governments, all HOME-assisted units must, at a minimum, meet all applicable State and local energy codes and rehabilitation standards. The HOME program statute and current regulations require new HOME-assisted units to meet or exceed the current edition of the IECC or ASHRAE Standard 90.1 (for multifamily high rise buildings), in accordance with Section 215 of the National Affordable Housing Act. HUD is currently considering

rulemaking to establish energy efficiency requirements for new construction and gut rehabilitation, as well as separate requirements for all other types of rehabilitation (i.e. other than gut rehabilitation). Note that HOME property standards at 24 CFR 92.251 do not currently differentiate between different levels of rehabilitation; HOME regulations do not (and will not) have substantial, moderate, or minor categories of rehabilitation.

CDBG

The CDBG program defers to local energy codes and standards. CDBG contains no requirements regarding the design of local rehabilitation programs, and grantees are given flexibility regarding the level and type of rehabilitation work to be performed and the standards to be met. The Section 108 Loan Guarantee Program and the Neighborhood Stabilization Program are authorized under the umbrella of the CDBG program statute, and follow most of the same rules; therefore, no changes are proposed to set energy efficiency requirements for rental housing assisted with CDBG, or Section 108 program funds.

USDA Rural Rental Housing Programs

USDA's multifamily housing programs offer strong incentives in all of their Notices of Funding Availability that encourage borrowers to adopt higher energy standards or measures than the minimum IECC/ASHRAE requirements outlined in this alignment report.

For new construction and substantial rehabilitation, points are awarded for participation in energy-efficiency and green building programs including Energy Star for Homes, Builder's Challenge, LEED for Homes, NAHB's National Green Building Standard, and Green Communities. Additional scoring points are awarded for on-site renewable energy generation, and for having certified Green property management. Because of the competitive nature of these programs, it is very likely that all of the new construction of housing with USDA funding will at minimum meet Energy Star for Homes.

For moderate rehabilitation, points are awarded for projects that meet Enterprise Green Communities program criteria. For rehabilitation and repairs that are less than moderate rehabilitation, the Notice of Funding Applicability for the Multifamily Preservation and Revitalization program awards points for specific measures such as the use of Energy Star appliances when replacing appliances, and Water Sense fixtures in replacing plumbing fixtures. Due to the competitive nature of funding for rehabilitation programs, it is very likely that all of the rehabilitation projects, where component replacement includes appliances, mechanical equipment, lighting and plumbing fixtures will utilize Energy Star appliances, Water Sense fixtures, and energy-efficient lighting.

Specific Actions to Effect Alignment:

The EE Team recommends that the recommended framework be articulated as a joint notice of agency policy by HUD and USDA, subject to the timetable outlined below. The notice would describe the framework, its rationale, the affected programs, and how HUD and USDA will ensure compliance and provide support to stakeholders in implementing the requirements.

New Construction

As noted above and summarized below, most HUD and USDA new construction programs reflect Energy Star, IECC, or ASHRAE standards, i.e. Recommendations 1 and 2.

New Construction Requirement	Already Reflect the Requirement	Changes Required to Reflect Alignment
Energy Star for Homes or Energy Star for Multifamily High Rise or Builders Challenge	<u>HUD</u> Choice Neighborhoods Housing Trust Fund (proposed) Neighborhood Stabilization Program -3 Section 202/Section 811 Self-Help Homeownership Opportunity Program (SHOP)	<u>HUD</u> HOME HOPE VI
IECC/ASHRAE	<u>HUD</u> Public Housing Capital Fund and Operating Grants Multifamily Insurance Programs <u>USDA</u> Section 515 New Construction (Direct Loan) Section 514/516 Farm Labor Housing (Direct Loan) ²³ Multifamily Preservation & Revitalization (Direct Loan) Section 538 Guaranteed Rural Rental Housing (Guaranteed Loan)	
Meet Local Codes	<u>HUD</u> CDBG ICBG, IHBG	
Qualified Allocation Plans and Local Codes	<u>Treasury:</u> Low Income Housing Tax Credit (LIHTC)	

Alignment with revised IECC and ASHRAE standards

²³ USDA Direct Loan and Guaranteed Loan programs have strong incentives in their Notices of Funds Availability for Energy Star for New Homes and other green building measures that encourage borrowers to go beyond these minimum requirements.

The EE Team notes that Energy Star, IECC, and ASHRAE standards for new construction are regularly revised and generally made more demanding over time. The EE Team recommends aligning all major Federal rental housing production programs to the specified levels summarized above as a major first step. The EE Team is not at this time recommending that as underlying standards are revised, the requirements in all Federal programs would automatically follow suit.

Instead, the EE Team recommends that the participating agencies follow the approach contained in the Energy Independence and Security Act of 2007, which generally established certain minimum energy requirements for HUD programs and further required the agencies to adopt revised standards as they were promulgated, provided their analysis determined that doing so would not adversely affect affordable housing.

Substantial Rehabilitation

In the case of Recommendation 3 for substantial rehabilitation, the EE Team refers to the recommendation of the CNA Work Team (CNA Team), which recommends that participating Federal agencies direct and procure the development and implementation of a new, single CNA template tool for programs that require CNAs that includes a traditional, comprehensive property evaluation, an assessment of green building and energy efficiency needs and opportunities, and a utility data collection component. With respect to actions to effect alignment, the CNA Team noted that:

NOTE: Development and adoption of a single CNA template tool will require a robust training and implementation component for agency and stakeholder users of the new CNA template. This training will include, at a minimum, a comprehensive user guide, in-person training for respective agency staff, regional in-person training for CNA providers and other stakeholders, and a webinar (or potentially multiple webinars targeting various stakeholder audiences) conducted jointly by the agencies and the contractor responsible for development of the template, as part of its overall engagement.

The EE Team builds on the CNA Team's recommendation by establishing uniform utilization of the template tool across all covered programs: substantial and moderate rehabilitation projects supported by programs that adopt the new, single CNA template tool would be required to adopt the recommendations generated by the tool to the extent they financially feasible for the property.

The major action to effect Recommendation 3 for substantial rehabilitation is to link the results of the CNA to the financial underwriting model used by each covered program to support funding award decisions, loan sizes, etc. This process may require a significant investment of staff time and resources, as discussed more below.

Moderate or Other Rehabilitation

In the case of Recommendation 4 for moderate or minor rehabilitation, the EE Team recommends the agencies adopt a policy along the lines of the policy HUD already has proposed for the Housing Trust Fund program:

*NOTE: ENERGY STAR-labeled and WaterSense-labeled products must be installed when older obsolete products (such as windows, doors, lighting, fans, water heaters, furnaces, boilers, air conditioning units, refrigerators, clothes washers, dryers, dishwashers, toilets, showers, and faucets) are replaced as part of the approved rehabilitation work, and such products are appropriate for achieving energy efficiency for the climate area in which the housing is located.*²⁴

In addition, the agencies may work separately or together to develop guidelines and/or protocols for additional energy efficient rehabilitation practices and procedures (e.g. recommended insulation levels and installation procedures, use of blower door test for air sealing, etc.).

Resource Estimate for Implementation:

The EE Team believes that sufficient staff resources and expertise are already available to implement the first phase of these recommendations: developing and issuing a joint HUD-USDA notice articulating the alignment policy. Both agencies have dedicated staff that could continue to flesh out the framework if approved to do so by their Departmental leadership.

In the case of Recommendations 3, 4, and 5 for rehabilitation and energy retrofits, self certification is likely the only feasible way to ensure compliance.

Estimated Cost Savings for Owners, Operators, Developers, Investors, and/or Lenders:

The issues of costs and benefits (i.e. savings) associated with energy efficiency requirements for newly constructed and rehabilitated rental housing are complex. The most comprehensive study to date found that building and rehabilitating low-income developments to the Energy Star for Homes standard or a similar standard added only 2.1 percent to average total project costs. The study also found that the projected lifetime cost savings were greater than the average additional upfront costs on a net present value basis.²⁵ These findings are consistent with other research on the costs and benefits of broader “green building” improvements that include energy criteria. In other words, the limited available data suggests that stronger energy requirements do lead to modestly increased development costs for the private sector.²⁶

Balanced against these additional development costs are the life-cycle savings generated by investments in energy efficiency. According to a somewhat more theoretical analysis, improving energy efficiency by 30 percent in the multifamily housing stock (which mostly consists of rental properties) could generate \$9 billion in savings annually to renters and owners, while achieving energy savings equivalent to the annual electrical output of 20 coal plants and the entire natural gas usage of California, Oregon, and

²⁴ Housing Trust Fund, Proposed Rule, 24 CFR Parts 91 and 92, FR-5246-P-02.

²⁵ Dana L. Bourland, “Incremental Costs, Measureable Savings: Enterprise Green Communities Criteria,” Enterprise Community Partners, 2009.

²⁶ Davis Langdon, “Cost of Green Revisited: Reexamining the Feasibility of Sustainable Design in the Light of Increased Market Adoption,” Davis Langdon, 2007.

Washington States and avoid the emission of at least 50 - 100 million tons of CO₂ per year – equivalent to the emissions associated with the current energy use of 4 - 8 million U.S. households.²⁷

Estimated Cost Savings for State, Local, and Federal Governments:

HUD's own recent experience further affirms that significant savings are achievable in existing multifamily rental properties. The 20,000 apartments in 221 properties that benefitted from the HUD Green Retrofit Program are expected to reduce energy consumption by more than 25 percent on average and save an estimated \$12 million annually on utility bills. Of course, in rental properties, the party that incurs the cost of making energy improvements may not be the same party that benefits from resulting savings. This "split incentive" challenge is in and of itself a major barrier to retrofitting existing rental properties of all kinds. There are not expected to be additional costs to State or local government as a direct result of the recommended alignments, although those levels of government may be motivated to invest more in energy code compliance in part as a result of this effort.

Schedule for Alignment Implementation: The Federal agencies generally expect to have a policy framework in place for implementing all or most of the recommended alignments by the end of 2011. As noted above, the policy implementation plan may phase-in certain components over a period of time.

Challenges to Effecting Proposed Alignment:

The EE Team recognizes the challenges in implementing Federal energy requirements for rental housing that are both internally consistent and sufficiently robust. Building codes are largely a State and local responsibility. Code compliance and enforcement is highly uneven across the country, due to gaps in knowledge, capacity, and resources, as well as concerns about cost. These issues may be especially acute for affordable rental housing. (As noted above, there is a general consensus that stronger energy requirements generally add to development costs; is not clear however that the incremental increase is significant enough to reduce the number of affordable housing units that would otherwise be available.)

In addition, codes are not always the most effective tool for addressing energy performance in existing properties, and tools to serve that market – such as CNAs that reflect energy consumption and cost-effective opportunities to reduce it – are at a more nascent State of development and deployment.

The EE Team believes that it is possible, and necessary, to continue to strengthen energy requirements for rental housing programs. Not only does it appear that it is possible to do so without imposing burdensome additional costs on developers and owners, recent research suggests that energy requirements can directly lead to positive energy and environmental outcomes. According to one recent

²⁷ Benningfield Group, Inc, "U.S. Multifamily Energy Efficiency Potential by 2020," Prepared for the Energy Foundation, October 29, 2009.

study, for example, stronger residential energy codes are associated with a 4 percent decrease in electricity consumption and a 6 percent decrease in natural-gas consumption.²⁸

Additional Improvements to These Requirements

The framework outlined in this report is not intended to prevent any agency or program from continuing to strengthen their requirements beyond what has been outlined herein. For example, HUD is in the process of developing more detailed recommendations in three areas: (1) energy efficiency measures in rehabilitation projects that address building envelope and HVAC efficiency measures in addition to Energy Star/WaterSense products and appliances; (2) water conservation; and (3) green building standards or guidelines. Energy efficiency is a critical building block in the development of a comprehensive healthy and green building strategy for rental housing.

²⁸ Jacobsen and Kotchen, "Are Building Codes Effective at Saving Energy? Evidence from Residential Billing Data in Florida," The National Bureau of Economic Research, July 2010.

Appraisal Primer

Lead Office: HUD-MF

Participating Offices: USDA-RD, HUD-MF, HUD-PIH, HUD-CPD, HUD-OSHC, Treasury-IRS

Prepared by: David B. Wilderman, HUD-MF

Issue Statement:

Federal law indirectly requires the use of the Uniform Standards of Professional Appraisal Practice (USPAP) as the basis for real estate appraisal work; however, Federal and State housing agencies' capabilities and methods for enforcement vary. USPAP still remains widely misunderstood and, in some cases, is even unknown to rental housing program staff and participants who are not themselves professional appraisers. In addition the specific ways in which USPAP applies to valuation of rental housing in various subsidy situations is frequently misunderstood or ignored.

Subject matter experts have pointed out that numerous variations exist among State and local housing agencies and Federal programs as to when an appraisal is needed and the scope of work the particular agency requires. USPAP makes appraisers accountable to their clients to know and understand a correct scope of work for any particular appraisal. But in many cases, the appraiser's client is a lender or an agency, not a property owner or developer. As a consequence, the appraiser is often not informed of the property owner/developer's intent to seek multiple financing sources that may trigger an expanded scope of work, or indeed, the decision to seek additional or alternative financing sources may occur after an initial appraisal has been completed. Lack of communication with the appraiser about the prospective uses of the appraisal report and lack of user knowledge about how to describe an appropriate scope of work create situations where completed appraisals are not responsive to the demands of all funding sources engaged in a project. In addition, the passage of time from one funding application to another may exceed the acceptable shelf life of an initial appraisal.

These circumstances expose end users of rental housing programs to inconsistent use of appraisals among Federal and State offices and the periodic frustration of obtaining additional or updated appraisal work. Lack of knowledge about USPAP fundamentals among users and laypersons (non-appraisers, in and out of government) weakens USPAP as a tool intended to discipline and standardize appraisal practice.

Proposed Alignment:

To improve use and understanding of USPAP among rental housing professionals who are not appraisers, the Team proposes to develop and publish a primer intended to be freely available, both in print and on the web, and widely distributed, and to promote this learning tool among agencies and industry participants. The primer should explicitly describe the general USPAP principles that apply to valuation of rental housing when public subsidies are provided. In addition the primer should either

contain as an appendix, or reference as a source, a table setting out general lender and agency scope of work requirements for appraisals as well as their acceptable shelf life so that all users can make informed decisions when scoping an appraisal. It should be noted that the primer represents an education strategy to solve a knowledge problem and to enable appraisal users to be more 'informed consumers' of appraisal products and hence reduce confusion and miscommunication. To the extent that informed consumers exert market discipline, appraiser carelessness or misconduct will also be reduced.

Creation of the primer does not require any Federal rule making, but it does involve some decision making and an actionable plan by certain participants, together with a potential need for modest funding and the allocation of some personnel resources.

Specific Actions to Effect Appraisal Alignment:

1. The Appraisal Institute has committed to preparing and publishing a primer as a public service relying on expertise of its individual members obtained through an internal proposal process. The Appraisal Institute is the largest publisher of appraisal education resources and is well equipped to prepare and publish (in multiple formats/media) the envisioned primer. It is anticipated that the primary means of distribution will be electronic. Federal Agencies will provide technical assistance to support this effort as requested and as appropriate.
2. HUD-CPD will incorporate appraisal concepts and appraisal literacy as part of its ongoing development of training curriculum for community development practitioners.

Resource Estimate for Implementation:

Necessary resources will be limited to hours of staff time devoted to providing subject matter expertise and comment on the content of the Appraisal Primer and similar attention to the content of training curriculum.

Estimated Appraisal Cost Savings:

There are at least two ways to consider possible results from publication and wide distribution of the appraisal primer. The first is quantitative. Will the government or program users save money or time? How much? The second is qualitative. Will the quality of real estate decision making be improved and will this have any particular impacts?

Appraisals are transactional due diligence documents normally prepared in association with the purchase, recapitalization, or construction of a real estate asset. So, a key data item is the average number of transactions per year. Obtaining such a figure only for multifamily properties is not that easy. Activity varies widely with economic conditions, interest rates, employment and household growth, and similar factors. But data suggest that in an average year:

- About 2,600 new multifamily projects start construction.

- The number of refinance and purchase transactions exceeds new starts by a factor of about 4 to 1, meaning that in an average year there may be 10,000 to 11,000 refinancing or sale transactions.
- There are about 1,300 new tax credit transactions per year and of these about 900 are new constructions and 400 are acquisitions and rehabilitation.
- Of the other new construction starts, about 125 are FHA-insured starts. Historically, few FHA insured starts have LIHTCs. By contrast, 80% to 85% of USDA-RD transactions are LIHTC deals and there is an average of 130 USDA-RD multifamily transactions per year. All FHA and USDA-RD starts require appraisals. While many State agencies do not require appraisals for allocation of tax credits, some do, and most deals will encounter an appraisal requirement by either or both the lender and investor.
- A significant and probably growing percentage of LIHTC transactions involve multiple funding sources that could trigger additional or duplicative requirements for appraisal work. If all additional sources required such documentation, the number of additional appraisal requirements would average about 1,400 appraisals per year. However, it is reasonable to estimate that no more than half of supplementary funding sources require additional appraisal work and the preponderance of this would be revisions to an existing document rather than an entirely new appraisal report. Accordingly, an estimated 700 modified or additional appraisals per year are generated by supplementary funding sources
- Accordingly, a reasonable estimate of annual multifamily appraisal activity suggests that there are 14,000 appraisals for transactions each year (2,600 new, 11,000 existing, and 500 to 700 duplicates). At an average cost of \$8,000 per appraisal the multifamily appraisal industry generates about \$112,000,000 per annum.

Estimated Costs Savings to Owner/Developers:

The maximum savings to developers by eliminating duplicates would be \$5,600,000 (700 x \$8,000). Although the primer will be helpful in eliminating some duplicates, it will not be 100% effective. The Team hopes that the primer will result in a 25% reduction in duplication costs or \$1,400,000. Every instance where there are dollar savings will also represent a time savings as the time to discover a need for a new or amended appraisal as well as the time to prepare the actual document will be eliminated. Lenders and investors do not typically bear appraisal costs since they charge borrowers or owners for the costs of third party reports.

Estimated Cost Savings to State, Local, and Federal Governments:

There will be no direct savings in costs to governments. However, it is reasonable to expect that improved knowledge of appraisal practice, more accurate and more correctly written scopes of work and other qualitative improvements in the use and understanding of appraisal documents will improve real estate decision making and reduce waste of government staff time spent dealing with poor or inappropriate appraisal documents. More importantly, improved decisions should result in more efficient use of Federal rental housing dollar resources and reduced exposure to default risk for lenders as well as for the Federal mortgage insurance programs of HUD-FHA and USDA-RD.

Schedule for Alignment Implementation:

Work on the primer can proceed promptly after approval and should be completed on a 12 month or shorter, schedule.

Challenges to Effecting Proposed Alignment:

Since the appraisal primer is being prepared as a project of the Appraisal Institute, the key challenge is that HUD has no actual control over the execution or progress of the proposal.

Market Study Standards Alignment

Lead Office: HUD-MF

Participating Offices: USDA-RD, HUD-MF, HUD-PIH, HUD-CPD, HUD-OSHC, Treasury-IRS

Prepared by: David B. Wilderman, HUD-MF

Issue Statement:

While some excellent model practice standards exist for market studies, there is no national standard of practice for market studies comparable to Uniform Standards of Professional Appraisal Practice (USPAP) for appraisals and no broadly acknowledged 'keeper' of such standards comparable to the Appraisal Foundation, which promulgates and periodically amends USPAP. The absence of a national practice standard is not for lack of effort. There are two primary sources of best practices or standards for market studies for rental housing. One of these is the code of ethics and practice guidance for rental housing market studies published by the National Council of Affordable Housing Market Analysts (NCAHMA), which have been adopted by a number of State housing agencies and endorsed by the Affordable Housing Investors Council (AHIC)²⁹. This guidance in this proposal is specific to affordable housing, but the concepts in it are also broadly applicable to all rental housing. Indeed, NCAHMA has been and remains an advocate of a national practice standard with broad applications. Another is the market study portion of HUD's Multifamily Accelerated Processing Guide (MAP Guide), which addresses market study guidance for both affordable and market rate multifamily housing, but in the context of HUD's multifamily mortgage insurance programs.

The absence of a fully developed, national practice standard and guide for market analyses results in a wide disparity in the content, methodology, quality, and reliability of studies that are used for three primary purposes:

1. By State Housing Finance Agencies (HFAs) to allocate Low Income Housing Tax Credits and establish feasibility for new development of rental housing;
2. By HUD-FHA and USDA-RD lenders and field staff to underwrite applications for mortgage insurance or direct loans; and
3. By developers, investors, and lenders to identify investment opportunities in rental housing.

Among States, practice varies widely, with some States prescribing sound but unique methodologies, while others have only loosely defined standards and others, as noted, have adopted NCAHMA's guidance in whole or in part. In spite of existing guidance provided by HUD-FHA and USDA-RD, studies prepared in support of applications for Federal mortgage insurance and direct loan programs are inconsistent in content, methodology, quality, and reliability. HUD-FHA has taken a significant step

²⁹ A table of States which have adopted (either fully or partially) NCAHMA Market Study Guidelines is included at the end of this report.

forward by preparing new guidance as a portion of the revised Multifamily Accelerated Processing Guide (MAP Guide). The revised MAP Guide provisions for market analyses closely parallel in substance the guidance published by NCAHMA.

The effects of disparate market study practice and quality can be both specific and cumulative. Specific effects include confusion, loss of time and extra expense for developers and owners who pay for market studies that may add little value to the quality of real estate decision making. Sometimes, these developers and owners may be required to pay for additional market studies when a study prepared for one purpose proves unacceptable for another. Cumulative results include higher and/or unforeseen risks of failure, with losses for developers and investors and loan defaults for lenders, with consequent impacts on HUD-FHA and USDA-RD mortgage insurance pools rising from poor or uninformed real estate decisions.

Subject matter experts indicated that a major obstacle to formation of an independent 'keeper entity' for market study practice standards has been inadequate economies of scale. Relative to the entire appraisal profession, independent market analysis engages a small number of practitioners. The effort to form and sustain a 'keeper entity' exceeds the resources of the profession when the range of interests is limited to rental housing. An independent, privately-supported, but widely-recognized 'keeper entity' for market study practice requires a broader base of practitioners engaging in specialties beyond rental housing. But even with a broader base of practitioners, the feasibility of a 'keeper entity' is uncertain. Accordingly, the immediate and primary means of aligning rental housing market study practices is found by assuring consistency and quality of Federal agency guidance in cooperation with State and private sector entities that wish to participate.

Proposed Alignment:

A necessary first step in alignment is to coordinate USDA-RD and HUD-FHA guidance on markets studies. Additional measures include ongoing support and assistance to NCAHMA and other industry advocates of market study standards of practice as well as promotion of market study literacy among housing and community development practitioners.

To align market study practices, the Team recommends:

1. Using HUD-MF's MAP Guide market study guidelines as the starting point for alignment efforts, given the fact that HUD-MF has recently completed a stakeholder feedback process in tandem with guideline development and that the HUD-MF guidelines substantially conform to NCAHMA standards, the Team will work to align USDA-RD and HUD FHA market study guidance.
2. Provide technical assistance as needed to support emerging 3rd party market study standardization efforts, such as those currently underway by NCAHMA.
3. Incorporating market study literacy training in HUD sponsored training and curriculum development for housing and community development practitioners.

NOTE: The Team effort has been limited to rental housing without special, assistive or health services. Subsequently, no consideration has been given and there is no intent expressed here to align market study practices unique to assisted living, sheltered housing, or the various types of senior care facilities.

The anticipated market study practice recommendations probably do not involve Code of Federal Regulation (CFR) changes, but may result in revised guidance to be published consistent with Agency clearance processes. Implementing these recommendations does contemplate use of significant personnel resources.

Specific Actions to Effect Alignment:

1. USDA RD should redraft existing market study guidance consistent with HUD's MAP Guide, Chapter 7 with exceptions for market and locations conditions appropriate to rental housing in rural communities.
2. HUD-FHA will support and provide assistance to advocates of national market study practice standards for rental housing development.
3. HUD will incorporate market study literacy as it develops training curriculum for community development and housing practitioners.

Resource Estimate for Implementation:

The resource needed for implementation is staff time of Agency personnel.

Estimated Cost Savings for Owners, Investors, and Lenders:

Market studies typically are needed during the development process and occasionally when a property is refinanced or repositioned. Accordingly, the minimum number of market studies conducted in a year approximates the number of multifamily housing starts, about 2,600 in an average year. (The current economic climate has made such 'averages' problematic.) However, market studies are often conducted for proposed developments that are never built. So, the number of studies prepared each year is a function of the number of new starts times a factor for development proposals that never get to closing.

The price for a study depends on the complexity of the development proposal and the market for which it is proposed, but a typical LIHTC-oriented market study likely would cost \$4,000 to \$6,000. An estimated 700 transactions per year have multiple funding sources that result in duplicate studies. If this duplication could be eliminated by alignment of study requirements, the savings to owner/developers would be in the range of \$3,500,000 (700 x \$5,000). Generally, lenders and investors do not pay for market studies but charge these costs to their clients.

Estimated Cost Savings to State, Local, and Federal Governments:

Governments generally do not pay for market studies. There will be no direct dollar benefit to government. However, high quality market analysis is essential to sound real estate decision making, and useful in working to minimize failure and poor performance in rental housing assets. To the extent

that decision making is improved, all parties will experience fewer losses and government agencies will see fewer claims on government mortgage insurance funds or other credit enhancements.

Schedule for Implementation: The schedule for USDA-RD guidance revisions is near term and relatively short, meaning less than one year. Training and technical assistance activities will be ongoing.

Challenges to Effecting Proposed Alignment:

- Agency and stakeholder inertia.
- Securing agency commitment of personnel resources required to coordinate and draft revisions to existing guidance.

States which have adopted (either fully or partially) NCAHMA Market Study Guidelines

State	Level of NCAHMA Standards Usage
<i>Arizona</i>	If ADOH Market Study Guidelines have not been followed, then the analyst followed NCAHMA model.
<i>California</i>	2010 California Market Study Guidelines use very similar language to MCAHMA standards throughout - in certain places, identical language is used.
<i>Georgia</i>	DCA would prefer the Principal(s) of the firm to be certified members of the National Council of Affordable Housing Market Analysts
<i>Indiana</i>	The Preferred Market Study Provider Application asks if the applicant belongs to NCAHMA.
<i>Kansas</i>	Incorporates NCAHMA's full Model Content Standards and Checklist
<i>Kentucky</i>	In its 2010 RFQ, KHC lists as a preferred requirement: "Professional affiliations, such as National Council of Affordable Housing Market Analysts, that contribute to the ability to complete the work described in this proposal."
<i>Louisiana</i>	Consultant must include the following in application packet: Proof of membership to the National Council of Affordable Housing Market Analysts
<i>Maine</i>	The study must be prepared by a qualified professional acceptable to Maine Housing in accordance with the MCAHMA Model Standards for Market Studies for Rental Housing in effect 120 days prior to the deadline for Applications for the applicable Credit round.
<i>Maryland</i>	Applications must include a market study prepared by an independent professional who has experience with multifamily rental housing and/or tax credit housing in Maryland and whose firm appears either on the list of acceptable market analysts maintained by the Department or on the list of firms who have undergone peer review by NCAHMA.
<i>Massachusetts</i>	The Department will accept membership in the NCAHMA organization as indication that the market analyst is a qualified professional acceptable to the Department. DHCD strongly encourages sponsors to direct their market analyst to produce a market study consistent with NCAHMA guideline materials and standards.
<i>Minnesota</i>	These guidelines were adopted in part from NCAHMA recommended practices.
<i>Mississippi</i>	Information on level of standards not available.

<i>Missouri</i>	A statement is inserted in market studies prepared by market analysts that are members of NCAHMA. Signed by the analyst that prepared the market study, the statement will certify that the analyst has no financial interest in the project and that the market study has been prepared in conformance with NCAHMA's Market Study Terminology and Model Content Standards (and, in areas where it does not conform, the reasons for non-conformance).
<i>New Jersey</i>	Requires a statement of the competency of the analyst conducting the study, certifying that he or she is a certified member of NCAHMA.
<i>New Mexico</i>	Verbatim language used to make up a majority of NM's requirements.
<i>Ohio</i>	The Preferred Market Study Provider Application asks if the applicant belongs to NCAHMA.
<i>Oklahoma</i>	References NCAHMA's definition of Capture Rate
<i>Rhode Island</i>	Prior to closing, Rhode Island Housing requires that a comprehensive market study conforming to NCAHMA standards be conducted as a condition of credit allocation analyzing the market area, including the depth and breadth of demand, comparable properties and rates, comparable operating expenses, market absorption rates as well as a study of the needs of the prospective population.
<i>South Carolina</i>	Prefers the Principal(s) of the firm to be a certified member, in good standing, with NCAHMA.
<i>Vermont</i>	Market Study Standards uses language very similar to NCAHMA's - and in some cases, identical - throughout its text.
<i>West Virginia</i>	Notes that NCAHMA's website provides guidance on the determination of the market area.
<i>Wisconsin</i>	WHEDA Market Study Guidelines uses very similar, and in some cases identical language to NCAHMA's Model Content Standards.

Subsidy Layering Review

Lead Office: USDA-RD

Participating Offices: Treasury-IRS, USDA-RD, HUD-MF, HUD-PIH, HUD-CPD

Prepared by: Larry Anderson, USDA-RD

Issue Statement:

The Housing and Economic Recovery Act of 2008 (HERA) encouraged the Federal government to standardize its subsidy layering review (SLR) processes, but consistency is still lacking. In many cases, Federal programs have a common denominator approach where some Federal programs overlap only when another Federal program mirrors all of their requirements. Absent this, subsidy layering review processes remain inconsistent. Inconsistency in review processes leads to slow and uncoordinated processing and decision making, and creates problems related to data collection and timing of the subsidy layering reviews, particularly as they may relate to the 'critical path' of the development project.

Background:

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 requires all projects receiving HUD subsidy combined with any form of other governmental assistance to undergo a SLR. This review will certify that there is no overlap of government subsidies when combining housing assistance programs administered by FHA with other forms of Federal funds administered by Federal, State, or local agencies. Subsequently, this requirement was merged with the Section 911 reviews required by housing finance agencies (HFAs) per LIHTC involvement to comply with the regulatory requirements of Section 42(m)(2) of the Internal Revenue Code.

The issue of subsidy layering is addressed differently by Treasury, HUD, and USDA. Subsidy layering is a statutory requirement to assure that Federal resources are neither duplicative nor wasteful when applied to affordable rental housing. These differences largely turn on the extent of subsidy layering analysis that the agencies require - ranging from USDA-RD requirements that rely on the subsidy layering review performed for LIHTC subsidy layering review purposes, to HUD-CPD's HOME program, which provides detailed guidance on how the analysis must be completed.

Developers often approach the subsidy funding process without a full picture of what resources will be used or obtained. This may result in a significant stretch of time between the start of the process and the final assembly of all funding sources. In addition, while there is a description of 'best practices' administered by HFAs, some funding review processes are more robust than others.

Other issues that may create challenges include timing issues (i.e., Does a review of resources require a commitment of all resources? Will professional reports such as an appraisal be used within their effective period?), data definitions (i.e. Will the appraised value or Capital Needs Assessment (CNA) findings be acceptable to all programs? How will reserve account deposits be determined, and how will

operating costs be defined?), or how to resolve findings or issues (i.e., What happens when one program disagrees with another on underwriting data or terms being provided? What kind of notice will be required when a problem is found? Will joint actions against developers be used? How will issues be communicated to the developer community?).

Proposed Alignment:

The Team proposes to pursue the following, with the ultimate goal of reducing redundant reporting and increase the timeliness of SLR and funding approvals:

- *Agree on a standard set of SLR facts:* Standard 'facts' include information about sources and uses of funds, appraised values, current and projected capital needs, and market information;
- *Collect the SLR facts in a standard format:* The standard 'format' includes forms, applications, or submissions to an automated database;
- Establish a process and timeline to immediately share the facts and findings among all Federal funders, housing finance agencies, and the LIHTC allocating agencies: 'Sharing' refers to how and when the information can be used by Federal funders, housing finance agencies and participating LIHTC allocating agencies to conduct the SLR and other funding approval decisions.

Specific Actions to Effect Alignment: To implement this recommendation, the Team has established a working group to review existing data and data collection currently performed by several programs within HUD and by HFAs in support of the LIHTC program. Based on that review, the working group will propose a standard set of SLR facts for acceptance by all Federal funders and LIHTC allocating agencies.

A second working group will review internal protocols to share and make recommendations using SLR information to further align the process of reviewing the information and approving the transactions. Since much of the information captured in the SLR involve issues being considered by other alignment teams, such as those reviewing CNAs, appraisals, and market studies, a strong effort will be made to ensure our recommendations fit with those being developed by other teams. A third working group will provide recommendations on the most effective way to communicate to the development and professional community the changes to current protocols and requirements.

To achieve full implementation, the Team expects to adopt a data collection and review protocol that resembles the following five steps:

1. Establish a point of contact for each State HFA and each Federal rental program.
2. Establish or adopt a SLR/Sources and Uses Form that is agreed upon by all stakeholders. This form should require the developer's signature certifying all sources applied for as of the date of application or that will be applied for are included and their uses do not overlap. The form should also include the developer/borrower agreeing to release all submitted data to any applicable funding source or government agency.
3. The developer/borrower submits the form as a part of the initial application for funding. Each source of financing listed would be emailed a copy of the SLR/Sources & Uses form as approved by the subject agency after their underwriting (the form is still an estimate at this point).

4. An updated/interim submission of the same SLR form should be submitted to all overseers of the sources of financing at construction close. This updated form would be emailed to each of the sources of financing listed after underwriting review (the form is still an estimate at this point).
5. A final SLR should be submitted by developer/borrower to all sources of financing once substantial lease up occurs (or if tax credits, when 8609's are issued). This form would include the final uses and which sources of financing covered those final uses. Each financing source would be emailed a final copy of this form after review and certification by the reviewing agency.

This would satisfy the goal of public disclosure of sources and uses. It would also allow us to have verification from each of the sources of financing at the appropriate stages – application, construction close, and lease up. Currently, many agencies have a cost certification process in which the developer/borrower submits their paid construction invoices to the financing agency and they verify those costs as eligible uses of their funds. Each agency would have a register of project expenses (uses) and a corresponding register of sources.

State-level Pilots: To initiate this process, pilots are being implemented in several States to see if these SLR alignment actions can be implemented quickly at a State level. The goal of the pilots will be to have an MOU established between the State HFA, HUD, and USDA that states what entity will perform the SLR and identify how data will be shared between parties to assure that all further funding review and approval decisions are made using the same information. The implementation efforts of the pilots will be used as basis for the working groups to complete their tasks and establish a national format that can be used in other States.

Resource Estimate for Implementation:

It is anticipated that the resources needed to implement this proposal as a pilot will be limited since many SLRs are already being conducted by housing finance agencies, and the basic product of the alignment concept is an agreement or MOU on how to proceed. However, for national implementation, depending on the level and extent of existing efforts, resources will be needed to review the current situation, resolve issues and differences, and establish an agreement to proceed.

For the pilot, the Team anticipates a series of meetings will be necessary to determine best how to implement these provisions in each State where an agreement is established. Representatives from the HFA, USDA, and each program to be covered by that agreement in HUD will need to be represented during these meetings and legal assistance will be necessary to prepare the agreement. The Team anticipates decision making for the funding of approximately 200 USDA projects and 300 HUD projects with LIHTC resources will be affected by this proposal each year, after full implementation (about 50 during the pilot).

Additionally, there may be merit to eliminating or streamlining any subsidy layering requirements that cause any Federal program to be treated differently. One possibility is to mutually agree to a single point of contact for all SLR reviews, such as the State HFA. This may require development of a compensation

schedule for any project's SLR which the HFA completes on behalf of one of the agencies but which doesn't receive direct Federal funding through that particular State agency.

Estimated Cost Savings for Owners, Operators, Developers, Investors, and/or Lenders:

The Team anticipates the primary benefit will be faster SLRs that result in quicker transactional decisions. This will reduce some of the developer's risk and lead to fewer instances where seed capital or dependent 3rd party funding is lost because of delayed subsidy layering or underwriting reviews. The Team also expects there to be some reduction in the costs to submit approval documentation as the goal will be for the developer to submit their information to only one agency. The Team will be able to identify more realistic cost savings once the pilot proceeds and additional feedback from stakeholders has been received.

Estimated Cost Savings for State, Local, and Federal Governments:

For example, HUD-PIH estimated staff time related to reviewing and approving a complete and error-free SLR application is 4 hours, with a policy-based limitation of 30 days total for review. For pilot States, staff time related to approvals equals approximately 980 hours on the 121 CF properties for which a SLR was performed in 2007. Staff time savings due to SLR alignment would be dependent upon the number of subsidy streams each property has; however, if SLR alignment had been implemented for the CF properties in 2007, approximately 496 staff hours could have been saved.

Additionally, the Team anticipates an additional benefit to government will be consistent reporting of facts by applicants leading to faster and better informed decision making. The Team also expects faster access to information and an opportunity to reduce the number of reviews associated with transactional approval. Ultimately, the instances of poorly informed decision making to be reduced saving the government unwise expenditures of limited housing resources. The Team will be able to identify more realistic cost savings once the pilot proceeds and additional feedback from stakeholders has been received.

Schedule for Alignment Implementation:

The initial steps in implementation are the pilot, followed by the finalization and approval of the conceptual approach, after which full implementation will follow. It is anticipated that during fall 2011 the Team will make contacts with target pilot States, establish working groups to implement the State pilots and receive final direction from DPC and RPWG to pursue pilot milestones. During late fall 2011, the Team will proceed with discussions on a State by State basis and seek to establish MOU's once a decision is made to begin implementation. Once the pilots are under way and the resulting conceptual approach is approved, a full national roll out could be achieved within 12 months of a successful pilot.

Capital Needs Assessment

Lead Agency: HUD

Participating Offices: Treasury-IRS, USDA-RD, HUD-MF, HUD-PIH, HUD-CPD, HUD-OSHC

Prepared by: Ted Toon, HUD-MF, and Meghan Walsh, USDA-RD

Issue Statement:

Federal agencies and programs currently have different requirements for what constitutes a valid Capital Needs Assessment (CNA). While some of these differences are necessary consequences of using CNAs for different purposes, administrative alignment of minimum requirements and standards of CNAs across Federal rental housing programs will help avoid duplicative studies if owners and developers introduce a new Federal funding source to the project. In addition to CNAs completed for a specific action or transaction, some CNAs are completed for property and portfolio assessment, long-term capital planning, and asset management purposes, which translate into a different overall scope. Minimum qualifications for providers of CNAs are inconsistent across agencies and programs, and in some cases, are non-existent. Finally, CNAs today generally do not capture utility consumption data that would allow measurement, benchmarking, and establishment of baselines.

Proposed Alignment:

The participating Federal agencies will direct and procure the development and implementation of a new, single CNA template tool for use by Federal and State agencies that administer rental housing program funds that require CNAs. The CNA template will include the actual CNA assessment tool, protocols for its use, reporting requirements, and minimum professional qualifications for the providers performing the CNA reviews. The CNA template will include a traditional, comprehensive property evaluation, an assessment of green building and energy efficiency needs and opportunities, and a utility data collection component. HUD and USDA will adopt the CNA template as the standard required protocol for all programs currently utilizing or requiring CNAs, while Treasury/IRS will share the CNA protocols and template tool as a 'best practice' with State Housing Finance Agencies (HFAs) that administer Low Income Housing Tax Credit (LIHTC), through the National Council of State Housing Agencies (NCSHA), for potential use by HFAs in administration of their programs.

These recommendations are based on a detailed assessment of the requirements, standards, and components of several CNAs currently in use by the participating agencies and some major lenders, as well as a review of a NCSHA report on CNA recommended practices for State LIHTC providers. The CNA team's outreach efforts on this alignment initiative have received overwhelmingly positive feedback from subject matter experts and stakeholders, including property owners and owner associations, lenders, State administrators, and CNA providers.

Specific Actions to Effect Alignment: Two primary actions will most effectively advance the CNA alignment effort:

1. Creation of a single CNA template tool for use by entities that administer Federal rental housing funds, in the form of an electronic model (e.g., Microsoft Excel workbook , web-based software application, Oracle application, or other models designed to allow housing developers and agency users to access pages in the template that are specific to funding sources or programs. Upon opening the template and selecting the agency or program that is requiring the CNA, the template will show the pages appropriate to that program and the level of CNA review and analysis required for that program.

This single template CNA tool will include:

- An assessment of all building systems, components, and elements to determine current needs and a standard 20-year projection of physical needs.
- A data collection page to record (often for the first time) information critical to efforts to benchmark performance for properties relative to their peers, in order to establish baselines for measurement of future performance. Data collection points and protocols will be consistent with industry-accepted standards, and will include utility configuration options (who pays for which utilities), fuel sources and costs, water and sewer costs and responsibilities, and whole-building utility consumption data, normalized for weather and occupancy variances.
- Two levels of review and analysis. Agencies would require the assessment level most appropriate to fulfill the needs of the applicable program.
 - **Level 1:** Agency programs using the CNA for asset management purposes, capital needs assessments, portfolio reviews, and purposes other than specific rehabilitation planning, will presumably require the Level 1 CNA review. Level 1 will be less expensive than Level 2 to complete, and will have less action-oriented recommendations than a Level 2 analysis, but would include the primary elements of energy efficiency, green building, and life cycle analysis to facilitate informed future decision making about underlying properties.
 - **Level 2:** In general, programs using the CNA to support property development, rehabilitation, refinancing and repositioning, long-term capitalization and capital planning, and energy efficiency and green building retrofits, will presumably use Level 2, which would be the most rigorous level of CNA review and analysis. Two CNA standards in use today illustrate the approximate scope of review proposed for Level 2 of the new CNA template – the Enterprise Green Communities program CNA protocols and the HUD Recovery Act/Green Retrofit Program CNA model.
- The CNA template will build in life cycle cost analysis for all CNAs to allow users to consider these attributes when determining the size of reserve accounts and to assist in investment decisions that may result in reducing utility costs going forward.

- The standard template CNA will include built-in analytics and logic models to enable the tool to make recommendations about the most cost-effective solutions to needs identified through the assessment. These analytics would include:
 - Cost-benefit /payback analyses
 - Early replacement analyses
 - ‘Cradle to grave’ review of materials and components, to the extent possible and as this information becomes more widely available
 - Other environmental benefits of systems and components, such as indoor air quality benefits, recycled content, recyclability, durability/useful life, etc.
 - Origin of materials and local sourcing
- It is important to note that while the CNA template will include the sophisticated analytics and logic to develop recommendations (as described above):
 - All recommendations made by the tool can be manually overridden by the user, for any number of reasons (i.e., cost constraints, availability of materials, physical constraints, etc.). A built-in audit function will allow the user to view an inventory of overridden fields.
 - The CNA review may identify a need for further supplemental, specialized assessments such as lead-based paint testing, an ADA accessibility study, asbestos review, feasibility testing for some alternative energy installations, underground storage tank testing, etc. The CNA itself will not include these specialized assessments, but will include ‘flags’ to alert the CNA provider to the potential need for further studies, either because of the funding source requirements or because property characteristics warrant further study.
 - The template CNA will assess and report on the physical needs and opportunities at the subject property, but will not require any work to be completed. Any requirements for action to be taken based on the CNA report will be driven solely by the agency and/or program utilizing the tool. In other words, the CNA tool provides the assessment but the agency/program applies its rules to the use of the CNA tool and the actions that may be required to address the assessment.
 - Any agency using the template CNA can exercise its discretion to waive or modify the CNA requirements for very small properties, where the cost of assessment would be prohibitive.
- The CNA may include a link between the CNA template and an online industry source for accurate and current construction cost data and estimated useful life (EUL) tables for materials and building systems that will be maintained and updated on an annual basis, to improve the accuracy and consistency of CNAs across all users.
 - It may also be possible to retain an outside contractor to link the CNA template to accurate and current construction cost data, and to maintain this data on an annual basis. This would greatly improve the accuracy of CNAs across the country.

- Further adaptation of these standards by the agencies could be additive but presumably not be subtractive, i.e., the minimum assessment standards would apply in all cases, but some agencies or programs may layer additional requirements beyond the CNA review.

Capital Needs Assessment Tool and the HUD-PIH Physical Needs Assessment Tool

Currently, HUD-PIH is working on the development of a Physical Needs Assessment (PNA) tool which will be used by Public Housing Authorities (PHAs) for capital planning. The HUD-PIH capital planning PNA is being created based on a CNA constructed by HUD-MF's Office of Affordable Housing Programs (OAHP) for its Green Retrofit program. Pilot testing began in the summer of 2011 and roll out to all PHAs is anticipated in 2012.

The HUD-PIH PNA is anticipated to be very closely aligned with the CNA. The major difference between the two products relates to the level of complexity and associated burden, and the level of control the agency has in the process. The HUD-PIH PNA will be completed by PHAs every five years and updated annually by over 3,100 PHAs, including some 2,100 small PHAs. However, the CNA tool is intended to be transactional, and thus would be undertaken by a much smaller subset of entities much less frequently, potentially only once every 15 or 20 years.

PHAs would only infrequently use the CNA tool for capital planning as the level of sophistication and complexity associated with it would be greater than with the PNA. It should be noted however that the CNA protocol could potentially apply to HUD-PIH transactional programs (such as Choice Neighborhoods or Public Housing Capital Grants) in instances where the program requires more rigorous standards than the PNA provides. Major recapitalization and substantial rehabilitation events generally require borrowers to meet a higher standard to justify the long term commitments implicit in the financing.

CNA training

Development and adoption of a single CNA template tool will require a robust training and implementation component for users. This training will include, at a minimum, a comprehensive user guide, in-person training for respective agency staff, regional in-person training for CNA providers and other stakeholders, and a webinar (or potentially multiple webinars targeting various stakeholder audiences) conducted jointly by the agencies and the contractor responsible for development of the template, as part of its overall engagement. This webinar training will continue to be available nationally, and archived for future use by anyone, accessible on the respective agencies' websites. CNA providers using existing CNA templates have emphasized the critical need for training and technical assistance, as the learning curve for a new tool and protocol (even for experienced providers) can be steep. Additionally, the presumed streamlining savings anticipated are dependent upon up-front training.

2. In conjunction with the new CNA template tool, the team proposes development of a minimum professional qualification standard for providers of CNAs, to ensure that providers have the experience and ability to assess the capital needs of rental housing properties. The CNA template proposed is more in depth than some CNA protocols in use today, including the energy

audits/assessments, life cycle cost analysis, and accessibility standards components, each of which requires specific knowledge and experience. It is critical that the new CNAs are completed by professionals capable in these areas so that assessments are correct and usable. The common qualification standard will likely reference and accept any number of broadly available industry qualifications, standards, certifications, or accreditations.

Resource Estimate for Implementation: Based on CNA team research into the resource requirements to develop other CNAs currently in use by other parties, the team estimates that the total cost to design, develop, implement, provide training on, and maintain the CNA template tool would be approximately \$1 million - \$1.5 million. This estimate includes procurement, design, development, testing, training development, training delivery, implementation and roll out of the CNA electronic tool, and associated protocols, user guide, and training materials. This total cost breaks down approximately as:

- CNA design and development: \$0.8 - \$1.25 million. This estimate assumes that one or more of the existing CNA templates can be used as a basis for design and development
- Implementation, training, technical assistance, user guide development: \$0.25 - \$0.5 million

It is critical that the full range of activities associated with the initiative is funded together.

This investment is recommended to be a shared cost between two of the Rental Policy Working Group lead agencies. HUD, as the most intensive user of CNAs, will assume the largest share of cost, with USDA assuming part of the responsibility commensurate with demand. Because Treasury works to provide guidance to State HFAs, but does not otherwise provide resources with which State HFAs are to administer the LIHTC program, Treasury/IRS may issue guidance related to the CNA tool but will not require HFAs to make the new CNA a required component of HFAs allocation process and will not contribute to costs of development. This initiative includes elements of Information Technology, Technical Assistance, and Transformation, and the team recommends pooling resources from each of these areas in the respective Agencies. This resource allocation is a strategic investment in a tool and protocol that will streamline operations, and save considerable Agency and stakeholder resources in the long run.

Estimated Cost Savings for Owners, Operators, Developers, Investors, and/or Lenders:

Cost savings are anticipated as providers of CNAs gain familiarity with the standardized requirements of CNAs across agencies. While difficult to estimate, the standardized CNA template tool could conservatively be expected to save 10-20% on the cost of an average, comparable CNA assessment and report, primarily due to the efficiencies of a standardized assessment approach. CNA providers, regardless of agency, program, or location of the property (depending on which State LIHTC administrators adopt the standard CNA), will be familiar with the tool, protocols, and expectations of the assessment.

Streamlining for providers should result in reduced costs to the consumers of the reports, i.e. the owners, developers, lenders, and/or investors. A back-of-the-envelope estimate of potential savings assumes approximately 3,000 CNAs are performed per year in the various HUD, USDA, and LIHTC

refinance and/or rehabilitation programs' assisted or subsidized properties. At an average cost of \$10,000, and a conservative, average assumed efficiency savings from using this new CNA template of 10%, annual savings from this alignment will be $(3,000 \times \$10,000 \times 10\% =)$ \$3 million.

The CNA tool will include, as described, cost/benefit analyses and life cycle cost analyses, informing investment decisions in components and technologies that will result in measurable savings generated from utility and water efficiency savings. These savings may accrue to the owners, investors, lenders, agencies, and/or residents, depending upon utility configuration, subsidy structure, etc.

Savings to stakeholders will also result from the elimination of the need for duplicate CNAs on the same transaction. For example, a property currently may need to meet one CNA standard for an agency (HUD or USDA) and another standard for the State administrator of LIHTCs, requiring two similar but distinct CNAs to be produced. Additionally, equity investors and lenders may continue to require their own independent CNAs. Properties subject to multiple program requirements across multiple agencies may similarly be required to produce (and pay for) multiple CNAs to satisfy each agencies' unique requirements.

Estimated Cost Savings for State, Local, and Federal Governments:

The single CNA template will simplify future coordination and updates to all of the agencies' CNAs, as regulations and requirements change, energy efficiency advancements are made, and new components and technologies become available, all of which will affect the rental housing industry and will be reflected in future versions of the CNA tool. Currently, HUD and USDA hire outside contractors to separately develop, update, and maintain these various templates. These costs average more than \$1 million per year. When there is only one standard template, there will be savings by reducing overlaps in work between agencies to keep templates updated.

The CNA tool will include, as described, cost/benefit analyses and life cycle cost analyses, informing investment decisions in components and technologies that will result in measurable savings generated from utility and water efficiency savings. These savings, while difficult to estimate, should equate to tens of millions of dollars per year in the near term; HUD and USDA alone spend in excess of \$6 billion annually on utilities in some form (i.e., tenant utility allowances, inclusive rents, budget-based operating subsidies, etc.). CNAs that drive owners and investors to make efficiency investments that result in very modest utility savings of 10-20% will generate millions in savings in a very short time. (These savings are very achievable: EnergyStar requires a standard that is 15% more efficient than local code, and experience in some HUD retrofit programs has shown that 20% savings are readily realized with modest investment.) The long-term goal is to utilize a CNA that includes an energy audit component, as recommended here, to make the agencies' portfolios much more efficient and affordable over time.

The agency program administrators that utilize the CNA reports and recommendations to support programs will benefit through saved staff time by having a standardized tool; currently, the lack of a standard format for presentation of CNA findings and recommendations result in a great deal of back-and-forth between the agency staff and the CNA provider. A standard tool with a clear and explicit

protocol for reporting and on which all parties are trained will greatly reduce the time and effort to successfully complete a property assessment.

Finally, the CNA tool, if linked to cost-estimating software or data, will save agency time and money (as well as owner/investor time and money) through more accurate and timely cost estimating and capital planning than can be performed currently.

Schedule for Alignment Implementation: The total development and implementation time for the single, multi-agency CNA template is estimated to be 24 months. This includes:

- Development of specifications and scope of work: 3 months
- Procurement of services: 3 months

Major Milestone at 6 months: Contract procured/Contractor selected for development of CNA

- Design and drafting of detailed template functionality and interface specifications with selected contractor: 4 months
- Development of beta version of template tool: 4 months

Major Milestone at 14 months: Beta tool developed for testing

- Testing, revisions, finalization of template tool: 3 months
- Limited release for final testing: 2 months
- Creation of user guide, training materials, on-line training sessions, technical assistance materials, etc.: 3 months (concurrent)
- Finalization of template tool: 1 month

Major Milestone at 21 months: Final tool and training materials released; training begins

- Public release of final CNA template tool, training for agency staff, CNA providers: 3 months (and ongoing via on-line training materials)

Major Milestone at 24 months: First round of training for agency staff and CNA providers completed, archived webinars and training materials available for public use

It is recommended that participating agencies adopt the CNA template for all programs requiring the use of a CNA within six months of public release of the template.

Challenges to Effecting Proposed Alignment:

Stakeholders have raised concerns that a CNA template and protocol that involves more rigorous review and reporting requirement than may currently be required, such as the addition of an energy audit component, will lead to increased costs per CNA.³⁰ These are legitimate concerns, as some agency programs that convert to the new template CNA will increase the rigor of the review and likely the cost

³⁰ The savings from efficiencies estimated above are savings over a similar-scope CNA.

to have a review performed. However, any increase in the rigor of CNA requirements are most likely coming regardless of this alignment initiative. In fact, the aligned CNA template should minimize the cost increases because of the cost-reducing effects of standardization. As detailed above, many programs' CNAs should fall in cost due to the alignment.

A related cost concern raised by stakeholders is that establishing minimum professional qualifications and training requirements for the professionals performing CNAs could, at least in the short term, increase the cost of finding a qualified professional to perform the CNA, particularly in rural areas and for owners that perform CNAs using internal staff who may or may not meet the aligned qualification requirements. While the development of common CNA provider qualifications promotes useful and proper CNA assessments, the enactment of such minimum qualifications or certifications may lead to an increase in the cost of providing/attaining a CNA, at least initially until the market catches up to the qualification standard. These challenges are believed to be short term, as the provider industry gets up to speed on qualifications, and that this potential cost increase is more than offset by the savings resulting from standardization.

The use of CNAs to meet the requirements of the various agencies and program offices varies greatly. The development of each of the primary forms of CNAs in use or development by the respective agencies today has been a lengthy and expensive process, involving considerable contract dollars and internal agency resources to guide the development and implementation of the tool. Modifications recommended through this alignment process, if adopted, may result in time-intensive and costly changes to guidance, software, training, and roll-out, which could render their implementation challenging. For example, many public housing authorities (PHAs) have a CNA system in place, either internally or through a third party provider. Some of these third party arrangements involve an ongoing contractual relationship for maintenance of the database created through the CNA. Some of these databases are further integrated into the PHAs other internal operating systems. Further, many PHAs perform the CNA activity for strategic planning with qualified in-house staff; a professional qualification requirement, if greater than today's requirements, would potentially force PHAs to bear the expense of third party providers or of extensive re-training for their staff to obtain professional certification.

Another example comes from the green CNA developed to support HUD's Green Retrofit Program; the tool was developed using an existing HUD CNA tool as the baseline, and considerable time and contract dollars to develop, test, train, and implement the tool. That CNA tool is designed to support a specific program, in that the results of the CNA are automatically electronically linked into the financial underwriting model used to support award decisions, loan and grant sizing, and loan committee reviews.

The development of a single CNA template capable of supporting the specific requirements and nuances of each of the application templates, with the functionality to allow the user to select the agency and program and have the appropriate screens appear, would in itself be a considerable undertaking in terms of agency resources, as described above. Once created and tested, there will be a considerable commitment of time and resources to then provide training and support to the various stakeholders in

becoming familiar with the tool. There will be an ongoing need for maintenance and updating the tool, and technical support to the users of the tool.

On the other hand, once in place, this template CNA tool will be easier to maintain and update with newer, more accurate information than multiple CNAs between agencies. With an increased emphasis on energy efficiency in rental housing, energy subsidies would correspondingly be reduced as well.

Despite these challenges, it is the team's collective recommendation that this undertaking is a strategic investment in a tool and protocol that will streamline operations and save considerable agency and stakeholder resources in the long run.

Improve Sharing of Data on Owner Defaults

Lead Office: HUD-MF

Participating Offices: Treasury-IRS, USDA-RD, HUD-MF, HUD-PIH, HUD-CPD, HUD-OSHC

Prepared by: Janet Stouder, USDA-RD

Issue Statement:

Multifamily participants are required by most HUD multifamily mortgage insurance and subsidy programs, and by USDA-RD, to submit an application for previous participation clearance when new business is proposed. The application clearly identifies the participant, its proposed role in a multifamily property, and its portfolio of multifamily properties, which includes HUD Multifamily-insured and/or subsidized cases, USDA-RD financed cases, and State/local government housing agency financed cases.

By reviewing this information, HUD and USDA-RD are able to identify instances of prior noncompliance with agency requirements. For example, applicants are required to disclose the most recent results of physical inspections and management reviews, disclose defaults on any cases in the last 10 years, and even identify debarments. This information is used to determine whether new business should be conducted with the applicant, and always takes into consideration whether the problems were satisfactorily resolved.

HUD's Office of Multifamily Housing Programs (HUD-MF) uses an automated system ('Active Partners Performance System,' or APPS) for storing this information, and HUD-MF staff reviews it when considering new applications for previous participation clearance. Outside clients (i.e., owners and management agents) can access the system to create and update their entity's organizational information and portfolio. APPS is also updated by feeds from other HUD systems (i.e., IREMS) regarding physical inspections, management reviews, and defaults for HUD multifamily cases. At this time, HUD has to verify information from other agencies with regard to compliance with RD- and State-agency financed cases.

Proposed Alignment:

1. *Grant USDA-RD access to HUD's APPS database.*

As noted above, USDA-RD programs require Previous Participation Clearance; however, only staff of HUD's programs has direct access to the APPS system. Therefore, USDA-RD personnel must contact a HUD office for information if they wish to learn whether a participant has a record of non-compliance, or if they wish to share information on a participant within their respective programs. As this automated APPS system is already in existence, giving (at minimum) read-only access to counterpart agencies like USDA-RD will help to streamline and speed up the process of approving new business. Reducing the processing time would improve delivery of services to our clients.

2. *USDA-RD provides compliance information to HUD's APPS database.*

USDA currently has a management information database that contains compliance status for the USDA Multifamily borrowers. The compliance information is similar to HUD's APPS database that reports on financial, physical, management, owner and civil rights non-compliance issues. Including USDA compliance issues into the database would provide the two departments with a central depository of information on a multifamily property program participant's performance that would in turn provide both departments with important information when making determinations of eligibility and continued performance. If USDA-RD were granted data input access to APPS, this would also provide increased access to information and would improve review of the multifamily participant's performance.

Specific Actions to Effect Alignment: HUD is currently in the beginning stages of upgrading the APPS system to address several other unrelated issues. Therefore, if this proposal is acceptable, HUD will need to include these requirements in the business design of the upgrade. In addition, USDA-RD will need to provide HUD APPS system with performance information from USDA-RD MFH Information System.

Resource Estimate for Implementation: This information is still to be determined, but there is likely low incremental cost if alignment is included as part of the business design for overall upgrade.

Estimated Cost Savings for Owners, Operators, Developers, Investors, and/or Lenders:

There will be a small benefit for owners, operators, developers, investors, and/or other lenders due to quicker review by the Federal government of the data submitted.

Estimated Cost Savings for State, Local, and Federal Governments:

There is limited monetary savings. However, non-financial savings will be gained by more reliable data and efficiency in gathering and reviewing data by HUD and USDA-RD.

Challenges to Effecting Proposed Alignment:

- Funding for the IT enhancement will need to be in place to incorporate the additional business requirements
- HUD is required to contact Congressional oversight committees for any changes to the APPS database.
- Regulations will need to be modified to notify the public that HUD will be sharing information with USDA-RD.
- Security issues for access to APPS system by USDA-RD users will need to be reviewed by both departments' CIO staff.

Fair Housing Compliance Enforcement

Lead Office: HUD-FHEO

Participating Offices: USDA-RD, HUD-FHEO, HUD-OGC, DOJ & Treasury-IRS

Prepared by: Jack Malgeri, HUD-FHEO

Issue Statement:

In 1997, the Secretaries of HUD and Agriculture signed a memorandum of understanding (MOU) between the two agencies concerning cooperation in the processing of USDA civil rights cases, joint investigations of civil rights issues, sharing of documents, and cooperation in the conciliation, informal resolution of cases, and the development of sanctions. While initially operational, the HUD-Agriculture MOU has largely not been followed and its dormancy has produced a lack of meaningful dialogue between the two agencies concerning the resolution of significant civil rights issues and proactively cooperating to address common civil rights problems in housing programs, frequently financed with both HUD and USDA financing. Little effort has been made on coordinating a common approach to the statutory requirement to affirmatively further fair housing, and how a coordinated effort by USDA, HUD, and Department of Justice (DOJ) program staff could enhance USDA efforts in the realm of affirmatively furthering fair housing in its housing assistance programs.

In 2000, the Secretary of the Treasury, the Secretary of HUD, and the Attorney General of the United States signed a Fair Housing Act MOU among the three agencies seeking to improve Fair Housing Act enforcement, educational outreach, and IRS agency guidance addressing significant civil rights concerns in the low-income housing credit program. Since 2000, the Fair Housing Act MOU has been successful in leading to the resolution of dozens of civil rights cases involving low-income housing credit projects referred to the IRS by HUD and DOJ. Specifically, through a coordinated process, the IRS has sent advisory letters to project owners based on the underlying HUD or DOJ civil rights action, noting the potential loss of low-income housing credits if the project owners fail to address the underlying civil rights issue. The three agencies continue to engage in educational outreach to project owners, syndicators, and housing credit agencies on civil rights matters, including disabled accessibility requirements. In addition, the IRS improved its guidance on civil rights issues for project owners, housing credit agencies, and the general public based on technical assistance from HUD and DOJ.

Nevertheless, a limitation of the existing Fair Housing Act MOU is that its practical focus has been limited to improving inter-agency technical operations issues, rather than focusing on addressing substantive civil rights policy concerns. There is also a need for more regular discussions among the three agencies and greater harmonization among Federal agencies concerning fair housing and civil rights issues.

For example, issues of harmonization include, but are not limited to: 1) the need for closer cooperation and more effective coordination among the U.S. Treasury Department, USDA, HUD, and DOJ in

addressing civil rights problems involving commonly funded housing projects, including disabled accessibility, local opposition to the development of affordable housing, and systemic patterns of discrimination; 2) the need for improved and coordinated data collection about tenant demographics and housing placement; 3) the lack of uniform guidance among the Federal housing programs about discrimination against voucher holders; 4) the need for greater unified educational outreach by the Federal housing agencies and the DOJ to developers, project investors, property managers, lenders, syndicators, housing credit agencies, and tenants; 5) the lack of consistent application of affirmative fair housing marketing in the low-income housing credit program that are utilized in other Federal housing programs; and 6) the lack of consistent site and neighborhood standards in the low-income housing credit program which would help avoid placement of housing in highly minority and poverty concentrated areas.

Proposed Alignment:

The outline for greater fair housing and civil rights alignment includes reconstituting and restarting the coordination process established in the original 2000 Fair Housing Act MOU among Treasury, HUD, and DOJ, and the 1997 HUD-Department of Agriculture MOU. Specific actions are listed in the approximate order in which they could be achieved, with the understanding that many of these proposals may be pursued simultaneously.

Specific Actions to Effect Alignment:

1. Reinvigorate the Interagency Coordination Process Set Forth in the MOUs

- Designated Staff. Designate career staff from each agency to serve as the point person for implementing the 1997 and 2000 MOUs and to confer on key guidance and enforcement issues set out below. Establish semi-annual meetings of IRS, HUD, USDA, and DOJ personnel to discuss fair housing issues applicable to the low-income housing credit program and improvements to processes, agency guidance, and cooperation among the agencies.

2. Enhance Educational Outreach and Training for State Housing Credit Agencies, Syndicators, Project Managers, and Developers

Within the existing structure of the 2000 MOU, the Federal agencies should reinvigorate:

- Cooperation among HUD, USDA, IRS, and DOJ officials in conducting annual training seminars, and meetings with:
 - State and local housing credit agencies about their obligation to comply with the Fair Housing Act when allocating low-income housing credits and performing compliance monitoring; and
 - Associations of developers, syndicators, property managers, and investors that participate in the LIHTC and USDA loan assistance programs about how they can comply with the Fair Housing Act, including training on exclusionary zoning law and practices, and accessibility requirements.

3. Enhance Quality Control of Non-Compliance Reporting to IRS

Within the existing structure of the MOU, the Federal agencies should reinvigorate the process of reporting Federal and State civil rights causes of action:

- Form 8823. Help ensure that housing credit agencies are timely and comprehensively reporting to the IRS and notifying owners when HUD has reported a charge or a reasonable cause determination by a substantially equivalent fair housing agency, regarding a LIHTC project, or when DOJ has filed a Fair Housing Act lawsuit. Establish a mechanism whereby DOJ and HUD can notify IRS directly of these events through a point of contact with the IRS Service Center processing the Forms 8823.

Resource Estimate for Implementation:

The resources necessary for implementation of these recommendations is minimal. It is anticipated that one staff FTE from each of HUD, USDA, IRS, and DOJ would need to commit to one-quarter of their time over the course of the one year implementation period in coordinating the effort to work on refining the existing MOUs, and in implementing the development of educational outreach programs, improved agency guidance, and operational details. The only expenditures contemplated would be for HUD and DOJ training, travel, and educational outreach efforts to stakeholders in the syndicator, lending, property management, and housing credit agency communities, which again is contemplated under the existing Fair Housing Act MOU.

Estimated Cost Savings for Owners, Operators, Developers, Investors, and/or Lenders:

The savings to owners and developers will largely result from avoiding litigation, retrofitting, and civil penalties as a result of published guidance and educational outreach which will mitigate the potential for fair housing violations. Lenders and syndicators will also save money, time, and resources by possessing greater certainty about potential civil rights problems and corrective measures before investing in a project.

Estimated Cost Savings for State, Local, and Federal Governments:

State and local governments will benefit through avoidance of potential litigation through greater guidance and education about civil rights problem areas.

The Federal Government will benefit from inter-agency cooperation which will help mitigate the need for resources devoted to litigation to correct civil rights deficiencies through more effective educational outreach and proactive compliance civil rights monitoring.

Schedule for Alignment Implementation:

Work on the enhancements to the respective MOUs and improved guidance and educational outreach can be completed on a one year schedule. Please see the following projected schedule:

- September 2011 – Convene agencies to discuss existing MOUs and suggested improvements;
- December 2011 – Revise existing MOUs;

- January 2012 – Begin educational outreach to housing credit agencies, syndicators, developers, and project managers;
- August 2012 – Reassess quality control efforts, educational outreach, and new processes developed under the MOU for effectiveness.

Challenges to Effecting Proposed Alignment:

The challenges for adopting these proposed solutions will require inter-agency cooperation. IRS, HUD, USDA, and DOJ have cooperated in the past and recognized the benefits of a unified effort to address civil rights problems in their respective housing programs. A key challenge is maintaining energy, commitment, and purpose, which was sometimes absent in past inter-agency civil rights initiatives. From past experience with the Fair Housing Act MOU among Treasury, HUD, and DOJ, the housing industry and housing credit agencies will be somewhat reluctant to implement requirements such as affirmative fair housing requirements, or site and neighborhood standards, perhaps because of erroneously perceived conflicts with neighborhood revitalization. We believe that this initial reluctance can be overcome by active outreach to the developer, syndicator, lending, and housing credit agency communities to fully explain the rationale and benefits of enhanced civil rights planning and compliance. Such outreach efforts occurred in 2000 in conjunction with the signing of the Fair Housing Act MOU and these outreach efforts significantly eased concerns and promoted the active partnership of key stakeholders such as the syndicator, property management, and housing credit agency communities.