



NAHMA

Washington Update
October 2013

Sequestration

- Budget Control Act of 2011 required sequestration
 - Mandatory across-the-board cuts to domestic & defense spending
 - Congress raised the U.S. debt-ceiling on the condition that the increase was offset with spending reductions
 - Congress' failure to approve \$1.2 trillion in cuts over 10 years triggered sequestration

Sequestration

- Negotiations to repeal sequestration failed in both the House and Senate
 - On March 1, 2013, President Obama signed the sequestration order
 - Sequestration cancels \$85 billion in budgetary resources across the federal government for FY 2013
 - Unless repealed by Congress, sequestration will be in effect for the next 10 years

Sequestration

- HUD developed the following plan of action to manage the shortfall in the Project-based Section 8 program:
 - All Section 8 contracts expiring in FY 2013 will be renewed if eligible under current program rules & will receive full 12 months funding
 - All existing multi-year contracts that expire after FY 2013 & have anniversary dates in Q1 of FY 2013 (Oct.-Dec.) will receive full 12 months funding
 - Sufficient to carry them into the Q1 of FY 2014
 - All other multi-year Section 8 contracts will receive less than 12-months funding
 - Sufficient funding to carry them into Q1 of FY 2014

Sequestration

- About 11,000 Section 8 contracts will receive less than 12-months funding;
 - According to HUD, they will receive roughly 8.5 months of funding
 - The actual amount will vary, depending on anniversary date
 - A multi-year contract funded in March 2013 might receive 10 months of funding (March-Dec.)
 - A contract funded in September 2013 might receive 4 months (Sept.-Dec.)

Sequestration

- HUD employees experienced mandatory furloughs as a result of sequestration
- All HUD/FHA Offices were closed on these days:
 - Friday, May 24
 - Friday, June 14
 - Friday, July 5
 - Monday, July 22
 - Friday, August 2
- On August 9, 2013, HUD announced that it would eliminate the last two unpaid furlough days (August 16th and 30th) due to better funding cut management with payouts from profits realized at Fannie Mae and Freddie Mac

Sequestration

- Impacts on Tenant-based Section 8:
 - On April 26, HUD's Office of Public and Indian Housing (PIH) sent letters to PHA executive directors, providing interim guidance regarding cost savings measures they must take to be eligible for funds set aside to prevent voucher terminations

Sequestration

- PHAs must take 5 steps to be eligible for set-aside funding:
 1. Work with the HUD Shortfall Prevention Team
 2. Stop issuing vouchers to applicants (except if for tenant protection vouchers, homeless veterans under a recent HUD-VASH allocation, or if the household was issued a voucher to move to a different unit)
 3. Rescind vouchers issued on or after April 1 & stop leasing (with exceptions similar to #2)
 4. Stop absorbing portable vouchers
 5. Stop issuing vouchers to those voluntarily moving from a project-based voucher unit

Sequestration

- A PHA that applies for funding under this new category will be required to certify that the 5 conditions have been met as part of the application process;
 - A PHA that receives set-aside funding for the prevention of terminations due to insufficient funding generally may not lease any units (with the exceptions noted) for the remainder of the calendar year

Sequestration

- This interim guidance letter also specified
 - **“PHAs may not unilaterally reduce the rent to owner in HCV program due to insufficient funding”**

Sequestration

- Impacts on RD multifamily housing programs:
 - Rental assistance is affected by sequestration - shortfalls will occur
 - With the additional Agriculture funding cuts in the FY 2013 continuing resolution, rental assistance has an overall \$65 million cut for FY 2013
 - RHS stated that the impact will be limited to September 2013

Sequestration

- RD initially estimated that 600 properties would be affected
 - The estimates for affected properties was later revised to approximately 350
 - Of this amount, RD has stated that 312 will definitely be affected
 - An additional 41 may be affected
 - 155 of the affected properties have some type of relief plan in place

Sequestration

- Impacts on RD multifamily housing programs:
 - Contracts that are not funded in FY 2013 will be the first to be funded in FY 2014 (which begins on October 1, 2013)
 - If contracts run out of money in August, no funding will be available in September
 - Rental assistance not received in September will never be received, because RHS cannot use funding for FY 2014 to cover FY 2013 shortfalls

Sequestration

- Rural Development has informed owners of options to make servicing tools available:
 - Allow authorized withdrawals from replacement reserve account
 - Permit borrower loans to the property (under requirements of 7 C.F.R. Sec. 3560.309)
 - Suspend the monthly reserve account deposit
 - Defer the monthly debt service payment to prevent a compliance violation
- RHS has notified affected properties and will have servicing staff work with them on these options

Sequestration

- Borrowers should not submit their October mortgage payment prior to October 1 for September occupancy
 - If submitted earlier than October 1, RA funds from FY 14 CANNOT be used to pay the October mortgage payment.

Fiscal Year 2013 Appropriations

- Department of Defense, Military Construction and Veterans Affairs, and Full-Year Continuing Appropriations Act, 2013 (HR 933)
 - The President signed it into law as P.L. 113-6 on March 26, 2013
 - Includes 5 final FY 13 appropriations bills and a continuing resolution for the remaining federal agencies
 - Funds agencies through September 30, 2013

Fiscal Year 2013 Appropriations

- The CR contains five full funding bills for these programs:
 - Defense
 - Military Construction and Veterans' Affairs
 - Agriculture
 - Commerce, Justice, and Science
 - Homeland Security

Fiscal Year 2013 Appropriations

- FY 13 Agriculture Appropriations in HR 933
 - Rural Development programs received updated funding levels
 - These amounts were subject to sequestration
 - The Ag bill also included additional across-the-board cuts to funding

Fiscal Year 2013 Appropriations

- The Transportation-HUD appropriations bill was not included in HR 933
 - Except for very limited exceptions, in general, HR 933 funded HUD programs at annualized CR levels
 - BUT, sequestration was applied to the appropriations, which effectively reduced many programs below FY 12 levels

Fiscal Year 2014 Budget

- The President's FY 2014 budget was released on April 10, 2013
 - It was delayed by two months
- This is the President's request for funding of federal agencies and programs
 - Often includes new policy proposals
 - This year's budget proposes some entitlement reforms and tax increases

Fiscal Year 2014 Budget

- *The exact funding levels in the President's FY 2014 Budget Request are noted in the FY 2014 Appropriations slides

FY 2014 HUD Budget Request

- Key policy proposals in the budget
- Tenant based Section 8:
 - Increase the threshold for deduction of medical and related care expenses from 3 to 10% of a family's income
 - This is a cross-cutting proposal which applies across rental assistance programs
 - HUD estimates that this will produce approximately \$30 million in savings for FY 2014

FY 2014 HUD Budget Request

- Tenant based Section 8:
 - Redefine “extremely low-income” in a manner that increases access to HUD rental assistance for working poor families (in rural areas in particular)
 - This proposal is also a cross-cutting measure intended to apply to all rental assistance programs
 - It was proposed earlier in the Affordable Housing and Self Sufficiency Act of 2012
 - HUD estimates this will generate savings of approximately \$155 million in FY 2014

FY 2014 HUD Budget Request

- Tenant based Section 8:
- Improve the process for establishing Fair Market Rents (FMRs) by removing the statutory requirement that FMRs be published for comment in the federal register
 - This will make it possible for HUD to publish FMRs online, along with any proposed material changes in methodology

FY 2014 HUD Budget Request

- Tenant based Section 8:
- Authorize biennial inspections for HCV units, which will reduce some administrative and financial burdens for property owners
 - Residents would retain their right to request an inspection
 - This provision would also offer PHAs the option of complying with the inspection requirement through an alternative inspection method, such as an inspection conducted under the requirements of LIHTCs
 - The proposal would allow the Secretary to adjust the frequency of required inspections for mixed-finance properties assisted with project-based vouchers

FY 2014 HUD Budget Request

- Tenant based Section 8:
- The final proposal to tenant based Section 8 would reduce the Utility Allowance payments to over-housed families
 - The utility allowance would change from the size of the unit actually leased by the family, to a utility allowance based on no more than the bedroom size that the family qualifies for under the PHA subsidy standards.

FY 2014 HUD Budget Request

- Key policy proposals in the budget
- Proposed legislative changes to the HCV program:
 - A substantial expansion of Moving to Work (MTW) programs to high capacity PHAs.
 - With partnership from HUD, participating PHAs will design and implement innovative policies related to housing preservation, family self-sufficiency, mobility, cost-effectiveness, and other priority areas
 - PHAs will be subject to rigorous reporting and evaluation requirements

FY 2014 HUD Budget Request

- Proposed legislative changes to the HCV program:
 - The authorization of triennial re-certifications for fixed-income families.
 - Eligible families would be defined as those for whom at least 90 percent of their income is from fixed sources such as Social Security, pension plans (federal, state, local, and private), or the supplemental security income program.
 - This is a cross-cutting proposal.

FY 2014 HUD Budget Request

- Proposed legislative changes to the HCV program:
 - Eliminating the requirement that PHAs complete and submit PHA Annual Plans
 - These Annual Plans would be replaced with processes for resident feedback, including the requirement that PHAs hold meetings with residents and the public related to significant changes to PHA policies and the proposals of major activities, such as demolition of housing.

FY 2014 HUD Budget Request

- Proposed legislative changes to the HCV program:
 - Improve the Project-Based Voucher (PBV) program by simplifying administration and increasing the flexibility to maximize participation from PHAs
 - Also this proposal seeks to leverage the program model to address vulnerable population, such as homeless families or veterans

FY 2014 HUD Budget Request

- Proposed legislative changes to the HCV program:
 - A Limit on sponsor-basing of voucher assistance
 - Included in the Department's FY 2013 budget request was a proposal to permit voucher agencies to sponsor-base up to 5 percent of their eligible voucher units to serve homeless families
 - The FY 2014 proposal will include a similar model in order to achieve the same goals.

FY 2014 HUD Budget Request

- Key policy proposals in the budget Project-Based Section 8:
 - A Flexible Portfolio Demonstration program that would offer regulatory and administrative flexibilities to high-performing multifamily owners
 - Legislation to facilitate the refinance & recapitalization of projects that have use agreements imposed by the Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA).

FY 2014 HUD Budget Request

- Because of sequestration, \$11.5 billion will be necessary to meet PBRA obligations and avoid short funding of contracts in FY 2014.

FY 2014 HUD Budget Request

■ Key policy proposals in the budget for Section 202:

□ The budget requests new authority to allow HUD to make more funds available for expansion activities through residual receipt collections, recaptures, and other balances.

- HUD sources tell us expansion activities could include new capital advance awards and PRAC-only awards

FY 2014 HUD Budget Request

■ Key policy proposals in the budget for Section 202:

□ Section 202 operating assistance-only contracts to fund supportive housing units aligned with State health care priorities.

- HUD is currently funding research jointly with the Department of Health and Human Services to design an "Aging in Place" demonstration program for seniors in affordable housing.

FY 2014 HUD Budget Request

■ Key policy proposals in the budget for Section 811:

□ HUD requested funding in the Transformation Initiative to evaluate outcomes from the Section 811 Project Rental Assistance Demonstration (PRAD) program initiated in FY 2012

□ The HUD budget requests authority to make more funds available for expansion through residual receipts collections, recaptures & other unobligated balances

FY 2014 Treasury Budget Request

■ Key LIHTC policy proposals in the budget

- Allow states to convert private activity bond volume cap (PAB volume cap) into LIHTCs that the state can allocate;
- Encourage mixed income occupancy by allowing LIHTC-supported projects to elect a criterion employing a restriction on average income.
 - 40% of the units must be occupied by tenants with incomes that average no more than 60% AMI.
 - No rent restricted unit could be occupied by a tenant with income over 80% AMI.

FY 2014 Treasury Budget Request

■ Key LIHTC policy proposals in the budget:

- Add preservation of federally assisted affordable housing to state QAP allocation criteria
- Permit a Real Estate Investment Trust (REIT) that receives LIHTCs to designate as tax exempt some of the dividends that it distributes

FY 2014 Treasury Budget Request

■ Key LIHTC policy proposals in the budget:

- Altering the formulas for 70% present value credit rate & 30% present value credit rate LIHTCs
 - Allow for the 9% temporary minimum applicable percentage to expire at the end of 2013
 - New discount rate would be the average of the mid-term & long-term applicable Federal rates for the relevant month, plus 200 basis points.
 - The 30% present value credit rate for LIHTCs that result from bond financing would continue to be computed under current law

FY 2014 Appropriations Bills

- On June 27, 2013, the Appropriations Committee in the Senate passed its Transportation, Housing and Urban Development (T-HUD) Appropriations bill for FY 2014
- The Appropriations Committee in the House of Representatives passed its T-HUD Appropriations bill on July 2, 2013

FY 2014 Senate Appropriations Bill

- The Senate and House are using two different spending caps for their appropriations bills
 - The House is using the \$967 billion discretionary cap set within the Ryan budget
 - The Senate is operating under the \$1.058 trillion limit from Patty Murray's budget resolution
 - The Obama Administration also used \$1.058 trillion in its FY 2014 budget request

FY 2014 Appropriations Bills

	Project-based Section 8	Housing Choice Vouchers	HOME	Section 202
House Bill (H.R. 2610)	\$9.45 billion	\$18.61 billion	\$700 million	\$374.63 million
Senate Bill (S.1243)	\$10.77 billion	\$19.59 billion	\$1 billion	\$400 million
FY 2014 HUD Request	\$10.27 billion	\$19.99 billion	\$950 million	\$400 million
FY 2013 Pre-Sequestration Enacted Level	\$9.32 billion	\$18.91 billion	\$1 billion	\$373.88 million
FY 2013 Post-Sequestration Enacted Level	\$8.85 billion	\$17.96 billion	\$948 million	\$355 million

FY 2014 Appropriations Bills

	Section 811	Community Development Block Grant
House Bill (H.R. 2610)	\$126 million	\$1.64 billion
Senate Bill (S.1243)	\$126 million	\$3.15 billion
FY 2014 HUD Request	\$126 million	\$2.79 billion
FY 2013 Pre-Sequestration Enacted Level	\$164.67 million	\$3.24 billion
FY 2013 Post-Sequestration Enacted Level	N/A	N/A

FY 2014 Appropriations Bills

- The FY 2014 appropriations bill produced by the House and Senate would force HUD to short-fund PBS8 contracts
 - The House bill would also severely limit the number of vouchers available from state housing agencies
- The Obama Administration has stated that it will veto any appropriations bill that follows the top-line spending limit of the Paul Ryan budget

FY 2014 Agriculture Appropriations Bills

- On June 13, the House Appropriations Committee approved its bill for Agriculture programs, which includes rural housing
- On June 20, the Senate Appropriations Committee also approved its own Agriculture appropriations bill

FY 2014 Agriculture Appropriations Bills				
	Section 515	Section 521 Rental Assistance	Section 538 (loan level)	Multifamily Revitalization Program & Rural Housing Vouchers (RHVs)
House Bill (H.R. 2410)	\$28.43 million	\$1.01 billion	\$150 million	\$27.08 million \$9.75 million (RHVs)
Senate Bill (S.1244)	\$28.43 million	\$1.01 billion	\$150 million	\$32.58 million \$12.58 million (RHVs)
FY 2014 USDA Request	\$28.43 million	\$1.02 billion	\$150 million	\$32.58 million \$12.58 million (RHVs)
FY 2013 Pre-Sequestration Enacted Level	\$31.28 million	\$907.13 million	\$130 Million	\$27.78 million \$10 million (RHVs)

FY 2014 Agriculture Appropriations Bills

- NAHMA remains concerned about shortfalls in the Rural Rental Assistance (RA) program
 - Shortfalls are expected to hit in September—the last month of FY 2013
- The Committee Report for the Senate Agriculture Appropriations bill demonstrates that some legislators are also concerned about this development

FY 2014 Agriculture Appropriations Bills

- The Senate Appropriations Committee directs RD to provide a report detailing:
 - The total number of households served by rental assistance
 - The average per unit RA cost per State
 - The number of RA contracts expiring in FY 2013 that were not renewed; and
 - A revised estimate of RA needs in FY 2014, to cover the original estimate of expiring units and those not renewed in FY 2013

FY 2014 Appropriations Bills

- On August 1, a motion to bring the debate over the Senate T-HUD bill to a close for a floor vote failed
- The House pulled their T-HUD bill from the floor on July 31, effectively stalling the bill's passage

FY 2014 Continuing Resolution: H.J. Res 59

- On September 10, Representative Hal Rogers (R-KY), introduced H.J. Res. 59
 - This continuing resolution for FY 2014 would provide \$986.3 billion for government operations, which is slightly below sequestration levels
- Obstacles to passage were amendments that would have defunded or delayed the Affordable Care Act (Obamacare)
 - Senate Democrats refused to pass the bill with these amendments

FY 2014 Continuing Resolution: H.J. Res 59

- FY 2014 began on October 1st
 - Without finalized appropriations or a CR, the federal government shutdown for the first time in 17 years
 - [HUD Contingency Plan](#)
 - [RHS Contingency Plan](#)
- Rental Contract Payments
 - HUD will pay Section 8 contracts, rent supp, Section 236 & PRACS where there is a permanent or indefinite authority or multi-year funding
 - Renew/Fund Section 8 contracts and PRACS where there is budget authority available from prior appropriations or recaptures
 - HUD has approximately \$400 million in advanced appropriations for Project-Based Section 8 HAPs
 - RHS Section 521 RA contracts renewed before the September shortfall should continue to receive funding

Status of Debt Limit Negotiations

- On 5/17/13, the Treasury implemented the standard set of “extraordinary measures” that would allow the U.S. government to pay its bills
 - The debt ceiling (\$16.99 trillion) had been reached
- Treasury estimates that 10/17/13 will be the day that the “extraordinary measures” are exhausted
 - Congress will have to raise the borrowing limit so that the government can continue paying interest on debts
 - If the limit is not raised, the United States will default on its debts for the first time in the nation’s history

Alternative Futures Working Group (AFWG)

- NAHMA AFWG volunteers recommended ideas for potential budget savings & program efficiencies
 - Proactive response to the sequestration threat
 - Identified 8 policy proposals for independent analysis of potential budget savings / costs
- Recap Real Estate Advisors analyzed the 8 policies
 - Methodology was consistent with Congressional Budget Office’s budget estimate processes

Alternative Futures Working Group (AFWG)

- NAHMA Board approved moving forward with the following AFWG recommendations:
- Eliminate Costs Unique to Affordable Housing
 - Cost-savings estimate:
 - \$267 million to \$970 million over 10 years in savings for the federal government
 - \$130 million to over \$525 million per year in savings to owners.

Alternative Futures Working Group (AFWG)

■ Subset Item for Eliminating Costs Unique to Affordable Housing

Track, Enforce & Prevent Repeat Payment Agreements

Cost-savings estimate: \$200,000 over 10 years in savings to the federal government

Alternative Futures Working Group (AFWG)

■ Perform Income Certifications Once for All Programs

Cost-savings estimate:

■ \$129 million over 10 years in savings for the federal government

■ \$70 million per year in administrative savings to O/As

Alternative Futures Working Group (AFWG)

■ Use Federal Tax Returns for Rent Calculations

Allow O/As to use residents' tax returns for income verification, or have the federal government incorporate the tax return data into EIV

Cost-savings estimate: \$84 million over 10 years in savings to the federal government

Alternative Futures Working Group (AFWG)

- Total cost-savings from the policies over 10 years is conservatively estimated at \$618 million

- Assuming a mid-point savings in policy "Eliminate Costs Unique to Affordable Housing" (i.e., \$618 million in the range of \$267 million to \$970 million)

Alternative Futures Working Group (AFWG)

- Additional ideas being discussed by NAHMA members (but not yet cost-analyzed) :

- Eliminate or reduce the frequency of interim recertifications
- Reduce frequency of Management Occupancy Reviews (MORs)
 - Use a risk-based assessment timeframe similar to REAC inspections (i.e., 3-2-1).

Key Legislative Issues

Improving the Low-Income Housing Tax Credit Rate Act

- On August 1, Senator Maria Cantwell (D-WA) introduced S. 1442, the Improving the Low-Income Housing Tax Credit Rate Act
 - Cantwell's legislation would eliminate the floating rate used by the LIHTC program and make permanent a 9 percent minimum rate for new projects and 4 percent rate for acquiring existing housing.
 - The current floor of 9 percent will expire in January of 2014

Improving the Low-Income Housing Tax Credit Rate Act

- This legislation also seeks to:
 - Simplify state administration
 - Create stability for owners and investors of Housing Credit developments
- A similar bill was introduced in the 112th Congress by former Senator Olympia Snowe of Maine
- S.1442 has so far gained 20 co-sponsors

Housing Choice Voucher Reform

- Affordable Housing & Self-Sufficiency Improvement Act (AHSSIA)
 - Bill must be introduced in 113th Congress
 - Passed by House Financial Services Housing Subcommittee in Feb. 2012
 - Did not become law during 112th Congress
 - NAHMA's written testimony to Senate Banking Subcommittee on Housing, Transportation & Community Development (Aug. 1, 2012):
<http://www.nahma.org/Leg%20area/Section%208%20Voucher%20Reform%20Testimony%20August%201%20202012%20Senate.pdf>

Housing Choice Voucher Reform

- NAHMA supported reforms in AHSSIA which focused on:
 - Streamlining inspections
 - Simplifying rent reviews
 - Reducing income certifications for fixed income households
 - Authorizing a LEP technical assistance program

Rural Development Voucher Program

- On August 14, 2013, Rural Housing Service issued a proposed rule to make the RDVP permanent
 - This rule proposes no significant program changes
 - RHS is now seeking OMB approval
- NAHMA plans to submit comments in support of the proposal

How to Get Involved

Grassroots Advocacy

- How members can get involved:
 - Contact your Congressional Representatives by:
 - Calling or writing letters to your Representatives
 - Visit your Representatives in their local offices or their Washington, DC offices
 - Inviting your Representatives and Senators to visit your properties
 - Visiting NAHMA Websites:
 - NAHMA grassroots webpage (<http://www.nahma.org/content/grassroots.html>);

Grassroots Advocacy

- On July 30th, NAHMA launched a new Grassroots Advocacy Toolkit
 - The toolkit delivers numerous documents that outline the legislative process and assist members in conducting grassroots advocacy
 - There are toolkits items specifically designed for AHMA members and others tailored for executive members
 - These toolkits are designed to help members capitalize on their strengths for a more effective grassroots advocacy campaign

Grassroots Advocacy

- The toolkits include:
 - FAQs on grassroots advocacy
 - Fact sheets on the legislative process
 - Information on 501(c)3 organizations and lobbying
- Future updates will include video testimonials from AHMA and executive NAHMA members

Grassroots Advocacy

- NAHMA has also launched the next generation version of NAHMA Maps
 - This version will allow a user to search for the number of affordable housing properties in an entire state
 - Search features will allow you to easily find your Congressional Representatives and their contact information
 - [NAHMA Maps](#)

Grassroots Advocacy

- We highly encourage members to invite their representatives to site visits at one of your properties
 - Site visits are an excellent opportunity for representatives to experience the positive enrichment that affordable housing provides to low-income individuals and families
 - These site visits will also provide you with time to discuss important housing issues and challenges with your representative

Grassroots Advocacy

- Please contact NAHMA staff for additional information about grassroots advocacy and meeting your Representatives:
 - Scott McMillen (scott.mcmillen@nahma.org)

Key Regulatory Issues

HUD Multifamily Restructuring

- Goals for the transformation (according to HUD's webpage, Transforming Multifamily for the 21st Century) are:
 - Applies industry best practices
 - Improves ability to manage risk and deliver excellent customer service
 - Increases accountability and national consistency
 - Better aligns multifamily's organization with other areas of HUD and offer staff clearer roles and new opportunities.

HUD Multifamily Restructuring

- The transformation involves four initiatives:
 1. Workload sharing to address fluctuations in volume
 - Allows offices, teams & managers to distribute workload across the country in both Production and Asset Management.
 - When there are spikes in volume, other offices, teams, or individuals with extra capacity can pick up the work.
 - Goals: Mitigate pressure on staff, reduce wait time & backlogs for customers
 - Pilot programs are underway

HUD Multifamily Restructuring

2. Risk-based underwriting and processing in Production

- Production applications segmented by risk & complexity
- More experienced underwriters will process riskier, more complex applications
- The underwriter will manage the end-to-end review of each application
- Drawing in technical experts such as construction analysts and appraisers as needed
- Goals: increase the efficiency of processing applications, provide improved customer service, and better manage risk

HUD Multifamily Restructuring

3. Account Executive and Troubled Asset Specialist support in Asset Management

- New Troubled Asset Specialists will focus on addressing challenges associated with at-risk assets
- Account Executives, today's Project Managers, will focus on the non-troubled portfolio
- Goals: enable Multifamily experts to better manage risk while creating more manageably scoped roles for staff

HUD Multifamily Restructuring

4. Streamlined organizational model in both headquarters & the field

- Headquarters – Consolidation scheduled for Fall 2013
- 6 offices reduced to 4:
 - Multifamily Production (Currently Office of Multifamily Housing Development)
 - Asset Management and Portfolio Oversight
 - The Office of Housing Assistance Contract Administration Oversight & the Office of Housing Assistance & Grant Administration will be merged into the Office of Asset Management
 - Recapitalization (Currently the Office of Affordable Housing Preservation)
 - Field Operations (New office)
- Goals: reduce duplication, provide better support and service to both the field, customers and stakeholders.

HUD Multifamily Restructuring

- Restructuring Multifamily field operation: total of 10 Multifamily field locations
 - Currently, multifamily employees work from 50 current offices
 - Consolidate 17 hubs into 5 future hubs + a satellite location
 - New York Hub + Boston satellite, covering Federal Regions I, II & III
 - Connecticut, Vermont, Massachusetts, Maine, New Hampshire, Rhode Island, New York, New Jersey, Pennsylvania, Virginia, West Virginia, Maryland, Delaware, Washington, D.C.
 - Atlanta Hub + Jacksonville satellite, covering Region IV
 - Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, U.S. Virgin Islands

HUD Multifamily Restructuring

- Restructuring Multifamily field operation: total of 10 Multifamily field locations
 - Chicago Hub + Detroit satellite, covering Region V
 - **Consolidation scheduled for Fall 2013**
 - Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
 - Fort Worth Hub + Kansas City satellite, covering Regions VI & VII
 - **Consolidation scheduled for Fall 2013**
 - Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Kansas, Iowa, Missouri, Nebraska
 - San Francisco Hub + Denver satellite, covering Regions VIII, IX & X
 - Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, California, Arizona, Hawaii, Nevada, Washington, Alaska, Idaho, Oregon

HUD Multifamily Restructuring

- Restructuring Multifamily field operation goals:
 - Improve consistency , operational effectiveness & customer service
 - More closely mirror the regional structure used elsewhere in HUD
 - Respond to budget environment
 - HUD claims the changes will generate roughly \$40-45 million in annual savings once implementation is complete
 - Plan for reduced staffing in future
 - Roughly 66% of multifamily staff are retirement eligible

HUD Multifamily Restructuring

- HUD states all Multifamily employees will have the opportunity to remain with Multifamily
- Options for employees in field offices that are being consolidated:
 - Relocate & take relocation pay
 - Take a buyout
 - Take early retirement if eligible
 - Some headquarters staff will also receive these options

HUD Multifamily Restructuring

- Caveats—HUD states:
 - This approach will be refined in consultation with the union & is subject to change
 - HUD will not launch any reorganization or role changes until union negotiations are completed
 - HUD states that it has received authority for buyout/early-out process
- The transformation will continue in region-by-region waves through FY16.

HUD Multifamily Restructuring

- The Committee Report that accompanied the House T-HUD Appropriations bill for FY 2014 referenced HUD restructuring:
 - "The Committee supports efforts at HUD to deliver more effective program oversight at lower cost through a reorganization of how the Office of Housing does business. The Committee directs HUD to deliver a progress report on its reorganization plans within 60 days of enactment that details by quarter through fiscal year 2019 HUD's estimated cost savings including both personnel and non-personnel cost reductions, severance and other early separation costs, recruitment and retraining costs, office space alteration and closure costs, and any other material costs or savings identified by HUD. The report should also include an analysis of potential risks associated with the reorganization, including loss of experienced and skilled staff, increased risk to FHA insurance funds, and an explanation of what steps HUD is taking to monitor and mitigate such risks. The report should also include an analysis of obstacles to a successful reorganization and how HUD plans to navigate these obstacles". –Committee Report, pg 69

HUD Multifamily Restructuring

- Resolution Approved by NAHMA Board (5/16/13):
 - "As a key stakeholder and partner in administering HUD's affordable multifamily housing programs for decades, the National Affordable Housing Management Association has great concerns over the abrupt and drastic restructuring of the Department's field office system. While HUD has noted that some 66 percent of its staff is eligible for retirement, NAHMA believes it would have been a more orderly and manageable process for industry stakeholders to adjust to a gradual "natural" reorganization over time rather than the current approach of encouraging so many talented and knowledgeable staff to retire at once. Fundamentally, we are concerned about the potential negative impact on owner's and manager's ability to efficiently and effectively access HUD program staff, tools and resources required for the preservation of the HUD assisted portfolio as safe, quality affordable housing."

PBCA Contract Rebids

- In 2011, the PBCA transition was completed in 11 states / territories
 - Iowa, Maine, Minnesota, Montana, New Hampshire, North Dakota, South Dakota, Vermont, Wyoming, Puerto Rico & U.S. Virgin Islands
- 24-month contract terms began Oct. 1, 2011
- ACCs in the 11 uncontested states expire after Sept.30, 2013
 - MORs included in ACCs

PBCA Contract Rebids

- PBCAs in 42 states / territories are operating under temporary ACCs
 - PBCAs are not conducting MORs in these states
 - In mid-August 2011, HUD withdrew the competition in the 42 states for which protests were filed with GAO
 - The 42 protested states were being re-competed through a NOFA process
 - Issued March, 2012

PBCA Contract Rebids

- Bidders filed new protests against the PBCA NOFA at GAO
- Objection to the NOFA's preferences for in-state bidders
 - Protestors argued this preference unfairly limited competition
 - HUD would consider applications from out-of-State applicants *only* for States for which HUD does not receive an application from a legally qualified in-State applicant

PBCA Contract Rebids

- On August 15, 2012 GAO sustained the protests
- GAO recommended that HUD:
 - Cancel the NOFA and rebid the PBCA contracts through a procurement instrument
 - Address the other concerns raised by the protestors
 - GAO did not address the in-state preference
 - Reimburse the legal expenses of the protestors
- GAO could not compel HUD to adopt its recommendations, and HUD did not accept them

PBCA Contract Rebids

- Lawsuit filed in Court of Federal Claims by some PBCA stakeholders
 - A decision in HUD's favor was announced on Friday, April 19, 2013
 - The Court found that these contracts are cooperative agreements and therefore, the manner in which HUD awarded these contracts is proper.

PBCA Contract Rebids

- PBCA Plaintiffs appealed the ruling to a Federal Circuit Court on June 13, 2013

- PBCAs also filed a motion requesting that the Federal Circuit order HUD to stay its planned award of PBCA contracts on August 1
 - HUD postponed its announcement until August 6, 2013

PBCA Contract Rebids

- HUD's NOFA Award Announcement 8/6/13:
 - 2-year contracts, effective 1/1/14
 - Current PBCAs will serve through 9/30/13
 - A 90 day transition period will run through 12/31/12
 - A total of 27 incumbents won
 - 15 states turned over to new PBCAs
 - 11 non-contested states to also renew 1/1/14
 - HUD PBCA NOFA website
http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/PBCA%20NOFA

PBCA Contract Rebids

- However, on August 27, 2013, the U.S. Federal Circuit Court of Appeals issued an injunction in the case
 - This decision was appealed
- The Court of Appeals has barred HUD from moving forward with the awarding of PBCA contracts
 - The injunction will last until the Court of Appeals issues a verdict on the case, which is anticipated in the first quarter of 2014

PBCA Contract Rebids

- The House Appropriations Committee Report that accompanied the T-HUD Appropriations bill agreed with a 2012 Government Accountability Office (GAO) report that a HAP contract payment by HUD to a property owner cannot be considered as the transfer of a “thing of value” to a PHA.
 - The Committee agreed that any administrative fees paid to PHAs in combination with Section 8 housing assistance payment (HAP) contract administration is compensation for the provision of a service that would otherwise be performed by HUD.

PBCA Contract Rebids

- The House Appropriations Committee Report states: “the Committee expects HUD to take responsibility for the administration of its contracts and either administer the contracts itself or outsource the provision of this service through procurement processes that are truly competitive and comply with Federal law”

PBCA Contract Rebids

- The House Appropriations Committee directs HUD to administer contracts funded under Project-Based Section 8 through the Office of Housing
 - The Committee also expects HUD to carry out the GAO’s recommendation to solicit the provision of HAP contract administration services for the Project-Based Section 8 Rental Assistance Program through a procurement instrument that will result in the award of contracts

Handbook 4350.3 REV-1 Change 4

- Change 4 to Handbook 4350.3 REV-1 “Occupancy Requirements of Subsidized Multifamily Housing Programs”
 - HUD Issued on August 7, 2013
 - Change 4 was immediately effective upon issue

Handbook 4350.3 REV-1 Change 4

- Change 4 includes policy information on:
 - Use of the Enterprise Income Verification (EIV) system
 - Violence Against Women Act (VAWA) requirements
 - Supplemental Information to Application for Federally Assisted Housing
 - Rent Refinement of Income & Rent Determination Requirements in Public and Assisted Housing Programs
 - Final Rule relating to admission of individuals subject to State lifetime sex offender registration

Handbook 4350.3 REV-1 Change 4

- Concern: No comment period before release
 - Policies could have been clarified / corrected as necessary before implementation
- Concern: Policies Effective Immediately
 - O/As need a reasonable implementation period to update policies, train staff & incorporate changes into the sites’ software
 - Change 4 requires software updates for O/As to comply with policy changes
 - For example, the requirement to include foster children & foster adults as family members is sound policy, but it requires a number of changes to certifications and TRACS.

Handbook 4350.3 REV-1 Change 4

- Concern: Student Rule
 - In paragraph 3-13.A.2, the handbook added “and” after each criteria to determine eligibility for assistance under the student rule.
 - Neither the statutory or regulatory language includes all of these “ands,” which raised some questions about whether HUD intended to change its previous guidance on students’ eligibility for assistance?
 - NAHMA is seeking further clarification on the intention of the handbook changes.

Handbook 4350.3 REV-1 Change 4

- Concern: Change 4 eliminated the previous Chapter 9 from Change 3 “Chapter 9, Required HUD-50059 and Subsidy Data Reporting” without replacing relevant information elsewhere in Change 4.
 - HUD’s Transmittal Notice states the previous Chapter 9 was removed due to the information already existing in the MAT Guide

Handbook 4350.3 REV-1 Change 4

- BUT, the previous chapter 9 also included guidance on special claims, excess income, TRACS data & signature requirements, document retention requirements for 59 and voucher files and un-cashed utility reimbursement checks
- NAHMA is seeking confirmation on the references O/As should use for guidance on these topics
- The new “Chapter 9 Enterprise Income Verification” in Change 4 provides guidance for using HUD’s EIV system.
 - Information from EIV Notice H 2013-06 included

Handbook 4350.3 REV-1 Change 4

- Concern: Further changes will be necessary to the Violence Against Women Act (VAWA) provisions in Change 4
 - Change 4 incorporates the Section 8 requirements included in HUD Regulations 24 CFR 5 Subpart L—Protection for Victims of Domestic Violence, Dating Violence, or Stalking in Public and Section 8 Housing
 - BUT the Violence Against Women Reauthorization Act of 2013 (P.L. 113-4) expands the protections and the programs covered

Violence Against Women Act (VAWA)

- The latest VAWA authorization (P.L. 113-4) covers many more housing programs than Project/Tenant Based Section 8 and public housing
- These newly covered programs include:
 - Section 202
 - Section 236
 - Section 811
 - LIHTC Properties
 - HOME
 - Section 221(d)(3)

Violence Against Women Act (VAWA)

- However, the VAWA 2013 reauthorization did not amend the authorizing statutes for the newly covered HUD programs
- On August 6, 2013 HUD published a notice, “Violence Against Women Act Reauthorization of 2013 Applicability to HUD Programs”
 - NAHMA plans to submit comments to the HUD regarding the specific provisions required for these newly covered programs

Violence Against Women Act (VAWA)

- NAHMA's Concerns with the VAWA Reauthorization of 2013:
 - The law requires resident notification of VAWA rights at eviction
 - The feasibility of "emergency transfer" language which requires federal agencies to develop model policies and procedures for emergency transfers for use by public housing agencies, owners and agents
 - O/As cannot "transfer" tenants between properties

Violence Against Women Act (VAWA)

- On 10/7/13 NAHMA signed onto VAWA industry comments to HUD, which included these recommendations:
 - HUD should clearly define its lease bifurcation and tenant eligibility requirements
 - We believe a 60 to 90 day time period provides a "reasonable" amount of time for tenants to establish program eligibility or find new housing under VAWA
 - Guidance is necessary to clarify whether VAWA's bifurcation and tenant eligibility provisions impact existing wait list and admission criteria.
 - VAWA notifications should be incorporated into existing standard program documents & materials distributed to tenants
 - Allow O/As to gather 3rd party certifications of domestic violence
 - Any emergency transfer provision should acknowledge the limitations of transfer policies with respect to the volume & availability of dwelling units under the control of various program participants

Homelessness Preferences

- NOTICE H 2013-21 "Implementation and Approval of Owner-Adopted Admissions Preferences for Individuals or Families Experiencing Homelessness"
 - Issued: July 25, 2013
 - Provides guidance on establishing owner-adopted admissions preferences for homeless families (with HUD approval)

Homelessness Preferences

- Applicable to all Multifamily rental assistance programs
- Owners who wish to adopt the homeless preference must submit a written request to their local HUD Field Office
 - Specifying the type of preference, a full description & how it will be implemented

Homelessness Preferences

- The notice advises that owners should consider reviewing their discretionary admission policies to determine if any changes could remove barriers to serving the homeless
- Owners can't establish separate admissions / termination policies for the homeless population which are different from the policies for all other applicants

Homelessness Preferences

- Owners must consider the following when adopting an admissions preference:
- Preferences affect only the order in which applicants are selected from the waiting list.
 - They don't change an applicant's eligibility or an owner's right to adopt & enforce tenant screening criteria
- All owner adopted preferences must be included in the Tenant Selection Plan (TSP) &, if required, the property's Affirmative Fair Housing Marketing Plan

Homelessness Preferences

- Owners may create a preference for homeless families using the HUD definition of homelessness or a definition that better suits the property
- Owners may create a preference or limited preference specifically for individuals / families who are referred by a partnering homeless service organization or consortium

Homelessness Preferences

- Owners may fill vacancies in the property by alternating their selections of non-homeless applicants on the waiting list with applicants who meet the criteria for the preference.
- When adopting a new preference, owners must notify all applicants on the current waiting list to determine if any are eligible under the preference

Homelessness Preferences

- The owner may require the individual or family to provide documentation to prove that they qualify for the homeless preference, or may rely on a partnering homeless service organization for verification
- A property designation of elderly or disabled on all or some of HUD assisted units remains in effect despite the adoption of the new homeless preference.
 - The homeless preference would not supersede the elderly / disabled designation
 - Qualified applicants would need to meet both criteria (i.e. homeless & elderly)

Homelessness Preferences

- An owner must comply with all fair housing and civil rights laws in the adoption of a homeless preference & the opening of the waiting list
 - An owner must ensure that the preference would not have the *purpose or effect of*:
 - Excluding other eligible families on the basis of race, color, national origin, religion, sex, disability, or familial status; or
 - Creating or perpetuating segregation
 - For example, an owner adopting a homeless preference cannot deny access to families with children

Section 8 Renewal Guide

- On May 18, 2012, HUD issued page changes to the Section 8 Renewal Policy Guidebook
- It included new appraisal requirements in rent comparability studies (RCS)
 - Intended to benchmark rents which exceeded
 - 110% of Small Area Fair Market Rent (SAFMR) for metropolitan areas or
 - 110% of Fair Market Rents (FMR) in non-metropolitan areas.

Section 8 Renewal Guide

- Specific requirements for RCS reports:
 - Must state the % of properties in the market area whose rents exceed 110% of the SAFMR in metro areas or 110% of the FMR in non-metro areas
 - Use paired rents to document conditions which differentiate the properties above & below the 110% threshold
 - Variances in condition, age, neighborhood support facilities, etc.

Section 8 Renewal Guide

- Industry position: the market is the true benchmark
 - Therefore, there is no need to use SAFMRs
 - Which have yet to be evaluated to determine their impact on the financial viability of properties
- New data requested in the RCS is arbitrary & statistically flawed
 - Information on the % of properties in the market area that exceed SAFMRs does not exist
 - The paired rent analysis is flawed--SAFMR & property characteristics are different, unrelated types of data

Section 8 Renewal Guide

- HUD suspended the changes to the RCSs **effective September 7, 2012**
 - Based on NAHMA & industry feedback on the appraisal requirements
 - HUD is working on revisions to the RCS policies
 - The Department will solicit public comments before implementing any changes

Residual Receipts

- On August 7, 2012, HUD published Notice H 2012-14
 - "Use of 'New Regulation' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts to Offset Project-Based Section 8 Housing Assistance Payments"
 - Policy went into effect for the November 2012 vouchers

Residual Receipts

- If Residual Receipts are available at a new regulation project:
 - Owners are allowed an initial reserve (“Retained Balance”) of \$250 per unit
 - HUD will consider approving requests for releases from the account in accordance with the Asset Management Handbook 4350.1
 - Residual Receipts funds in excess of the Retained Balance may be used to fund a Service Coordinator Program prior to offsetting HAP payments

Residual Receipts

- Residual Receipts accounts in excess of \$250 per unit must be applied on a monthly basis to offset HAP payments
 - Until the Residual Receipts account reaches the Retained Balance level
- Any surplus cash remaining at the end of the fiscal year must be deposited into the Residual Receipts account
 - If the account balance exceeds \$250 per unit, offsets of HAP payments must be reinstated

HUD Asset Management Update

- HUD priority is to develop an early warning system for properties in financial trouble
 - Put an internal risk score on a property’s financials
 - HUD does not currently plan to share the ratings with O/As
 - HUD is seeking lenders’ help to identify properties with early signs of financial trouble by requesting their watch lists
 - Most FHA lending is done by 16 lenders

HUD Asset Management Update

- Sustaining Our Investment (SOI) Initiative
 - SOI is seeking consistency in financials, analysis, workflow and inspections
 - Intended to empower HUD project-managers to be proactive when properties show signs of trouble

HUD Asset Management Update

- 4350.1 Asset Management Handbook
 - Updating the 4350.1 is another major priority
 - The last comprehensive update was 1992
- HUD field staff identified 83 topics for revision
- Working on Table of Contents
- HUD is developing “subject matter experts” among its staff

NAHMA Comments on HUD's Draft 4350.1 Table of Contents

- Specific Information Which Should Be Covered Under the Units and Topics
 - *Previous Participation*- handbook revision presents an opportunity to provide clear instructions about when and how field offices should remove flags
 - *Multifamily Emergency and Disaster Guidance (Chapter 38 of 4350.1)*- expand Chapter 38 to give:
 - Guidance regarding relief & options for non-Presidentially Declared Disasters
 - Authority to the local HUD Program Centers and/or HUB to approve remedial action

NAHMA Comments on HUD's Draft 4350.1 Table of Contents

- Specific Information Which Should Be Covered Under the Units & Topics
 - Reserve for Replacements- NAHMA strongly urged HUD to update Chapter 4 Reserve Fund for Replacements at the earliest opportunity.
 - Primary objective of R4R policies must be to ensure the long-term physical & financial viability of the asset
 - Which is reason enough to place high priority on the Chapter 4 update.
 - Urgency is even greater because of:
 - Inconsistent & conflicting R4R policies established in the current Chapter 4 & Notice H-2011 30, "Use of Reserve for Replacement Accounts in Restructured Mark-to-Market (M2M) Properties"

Rental Assistance Demonstration

- HUD's Rental Assistance Demonstration (RAD) allows:
 - Public housing & Mod Rehab properties to convert their contracts to:
 - Project-based Section 8 contracts or
 - Project-based housing choice vouchers
 - Competitive application process

Rental Assistance Demonstration

- HUD's Rental Assistance Demonstration (RAD) allows:
 - RAP & Rent Supp properties to convert tenant protection vouchers to:
 - Project-based housing choice vouchers
 - Conversion applications accepted for properties whose mortgages expired between Oct. 2, 2006 – Sept. 30, 2013

Rental Assistance Demonstration

- Notice PIH-2012-32 (HA), REV-1 “Rental Assistance Demonstration – Final Implementation, Revision 1” was issued on July 2, 2013
 - It provides program instructions for the Rental Assistance Demonstration (RAD), including eligibility and selection criteria
 - Revisions for Public Housing and Mod Rehab

Senior Preservation Rental Assistance Contracts (SPRACs)

- About SPRACs:
 - Authorized by The Section 202 Supportive Housing for the Elderly Act of 2010
 - \$16 million available for SPRAC funding.
 - 20-year contracts

Senior Preservation Rental Assistance Contracts (SPRACs)

- SPRAC Purposes:
 - Prevent displacement of elderly residents in the case of refinancing or recapitalization
 - Preserve & maintain affordability of Section 202 Direct Loan projects
- Eligible properties: Section 202s with original interest rates of 6 % or less (financed prior to 1974)

Senior Preservation Rental Assistance Contracts (SPRACs)

- Final Notice of Senior Preservation Rental Assistance Contracts Award Process published on July 3, 2013.
- SPRAC Application Due Date: September 3, 2013
- To apply for a SPRAC award, submit electronic/digital versions of all required application elements to: SPRAC@hud.gov.
 - HUD is only accepting electronic SPRAC application submissions under this round of program funding

FHA Commitment Authority

- On 6/28/13 HUD announced it was approaching its \$25 billion limit on Commitment Authority for FY 13 to operate its FHA Multifamily, Risk Share and Healthcare Programs
 - At current usage rates, FHA will not have sufficient Commitment Authority for all applications in the pipeline

FHA Commitment Authority

- As of 7/15/13, FHA is prioritizing use of its Commitment Authority
 - All firm commitments already issued will be honored
 - FHA will continue processing new mortgage insurance applications based on available commitment authority on a prioritized first come / first serve basis

FHA Commitment Authority

- Priorities are as follows:
 - Priority 1: Projects affected by Hurricane Sandy (under Notice H13-05)
 - Priority 2: Affordable Transactions: Risk Share Loans (542(b) GSE and 542(c) HFA); Affordable Multifamily New Construction and Sub Rehabilitation; Affordable Multifamily Projects under Section 223(f); and Affordable Multifamily Refinance Projects under Section 221(a)(7)
 - Priority 3: Market Rate Transactions, in the following order: Multifamily New Construction / Substantial Rehabilitation; Multifamily Market Rate Refinance under Section 223(a)(7); and Multifamily Market Rate under Section 223(f).

New Section 236 Preservation Process

- On July 1, 2013, Multifamily Housing launched a centralized processing model for the majority of Section 236 preservation activity through the Office of Affordable Housing Preservation (OAHP) in HUD Headquarters
 - Section 236 property owners and purchasers will no longer submit applications to the Multifamily Hub or Program Center.

New Section 236 Preservation Process

- Section 236 property owners will be required to submit requests for applicable transactions directly to OAHP for review, approval, and processing
 - HUD has not made nor requested any change in current statutes, regulations, or policies governing how these transactions are evaluated and approved.

New Section 236 Preservation Process

- Applications that were sent to any Multifamily Hub, and which are under review as of July 1, 2013, will remain with the applicable Hub for completion.
- OAHP will only process applications that are new submissions as of **July 1, 2013**.

New Section 236 Preservation Process

- OAHP's new portfolio of Section 236 transactions will include the following:
 - Requests for prepayment of FHA-insured and HUD-held Section 236 Loans
 - Interest Rate Payment (IRP) Decouplings
 - Flexible Subsidy Deferrals
 - Post-Transaction Unit Rent-Setting, Including Unit Rent Increases of Greater than 10 Percent
 - Determination of Excess Income Compliance

■ Continued on next slide

New Section 236 Preservation Process

- Housing Assistance Payment (HAP) Assumptions (dependent upon the approval of a modified Delegation of Authority)
- Issuance of Tenant Protection Vouchers and Enhanced Vouchers
- Nonprofit Fees and Sales Proceeds
- Modifications to LIHPRHA / ELIHPA Use Agreements
- Unit Conversion Requests

HUD Notice H2012-27: PCNAs, R4Rs & Accessibility

- HUD Notice H2012-27, effective March 31, 2013:
 - Revised Requirements for Project Capital Needs Assessments (PCNAs)
 - Estimated Reserves for Replacements (R4Rs)
 - Remedies for Accessibility Deficiencies

HUD Notice H2012-27: PCNAs, R4Rs & Accessibility

- Purposes:
 - Create more consistency among lending, development & asset management requirements across HUD & other federal housing programs
 - Allow older HUD properties to recapitalize by taking advantage of lower interest rates
 - Clarify the fair housing accessibility requirements for properties financed with FHA insurance

HUD Notice H2012-27: PCNAs, R4Rs & Accessibility

- HUD does not believe the new PCNA or R4R requirements will discourage borrowers from refinancing with 223(a)(7) or 223(f) loans:
 - Demand for FHA loans is at a record volume
 - HUD staff members are concerned about the Department's capacity to meet high demand

HUD Notice H2012-27: PCNAs, R4Rs & Accessibility

■ Required R4R balances

HUD tried to strike a balance which would match with the needs of the properties

- 105% of the total estimated costs of component replacements and major maintenance
- 5% of the total, aggregate inflation adjusted projection of capital needs for the estimate period

HUD Notice H2012-27: PCNAs, R4Rs & Accessibility

■ 20-year estimate period for all PCNAs

HUD added an inflation trend to minimize the impact of projecting 20 years forward

- Reducing the period to 10 years would have made the projection inconsistent with other programs

HUD Notice H2012-27: PCNAs, R4Rs & Accessibility

■ “Intrusive tests & examinations”

Required in lieu of conducting “forensic examinations”

Costly analysis is not necessary if common-sense methods could provide the information necessary to evaluate the property’s condition

REAC

- As of Dec. 2012, REAC had 3 major initiatives in the works:
 - A web-based library of definitions (to explain what is and is not a deficiency)
 - A survey of property managers to provide feedback after inspections
 - Plans to upgrade REAC software so that inspectors can take pictures of the deficiencies

REAC

- Common REAC & White House Rental Policy Working Group goals:
 - Extend the physical inspections pilot program to 4 more states in 2013 (for a total of 10)
 - 1 inspection for mixed-financed properties to satisfy all program requirements
 - Agree to 1 consolidated submission for financials

REAC

- The average score of an assisted multifamily property is 84 points
- New Inspection software went live for multifamily properties in Jan. 2013
 - Incorporates new definitions & policies announced in Aug. 2012 Notice
- REAC's "DCD 4.0 Web Page" includes training material on PASS, a public version of the 4.0 inspection software to be used in inspections

REAC

■ REAC's DCD 4.0 inspection software features:

- A decision tree format (to reduce inspectors' subjectivity)
- A point loss cap for multiple occurrences of the same deficiency
- Notations of all deficiencies and locations
- Inspectors' comments

REAC

Point Loss Caps

Inspectable area	Maximum point deduction for a single deficiency
Site	7.5
Building Exterior	10.0
Building Systems	10.0
Common Areas	10.0
Dwelling Units	5.0

REAC

■ Considerations for appeals:

- Under the point loss cap, if a property had the same deficiency in 3 places, points will only be lost once
 - **BUT O/A must appeal all 3 deficiencies to get the points back**
- Make sure 3rd party expert who submits information for an appeal actually observes the deficiency
- An O/A can get a letter from a fire suppression company to file a pre-database adjustment for paint on sprinklers

REAC

- REAC Compilations Bulletin Revision 2.3
 - REAC inspectors will note but not deduct points for:
 - Single "dead" roaches
 - Tenant owned-equipment, including fire extinguishers
 - REAC inspectors must continue to deduct points for deficiencies to tenant-owned refrigerators, stoves, & window air conditioners
 - Owners may continue to submit TR/DBA requests for cited deficiencies for these resident owned items
 - NAHMA specifically requested the fire extinguisher revision
 - The bulletin also updates & clarifies scattered site inspection protocol

REAC

- REAC posted inspection preparation materials and recommended procedures for O/As and inspectors on YouTube:
www.youtube.com/hudchannel
- HUD sent a letter to NAHMA detailing physical inspection postponement & cancelation procedures (October 14, 2010) (*see NAHMA HUD webpage for details*)

HOME Final Rule

- HUD published the final rule, "HOME Investment Partnerships Program: Improving Performance and Accountability; Updating Property Standards," on 7/24/13
 - Effective Date: 8/23/13

HOME Final Rule

- Purposes:
 - Address the operational challenges facing participating jurisdictions
 - Improve understanding of HOME program requirements
 - Update property standards to which housing funded by HOME funds must adhere
 - Strengthen participating jurisdictions' (PJ) accountability for both compliance with program requirements & performance

HOME Final Rule

- Summary of in the HOME Final Rule's Major Provisions:
 - Updates definitions & adds new terminology relevant to the housing market and real estate market
 - Modifies eligibility requirements of community housing development organizations
 - Ensures they have the capacity to undertake their responsibilities under HOME
 - Establishes deadlines for project completion
 - Ensures housing units needed by low-income households are constructed & made available timely

HOME Final Rule

- Strengthens conflict of interest provisions
- Clarifies language in several existing HOME regulatory provisions to remove ambiguity about expectations of participating jurisdictions, community housing development organizations & other participating entities
- Makes several technical, non-substantive changes

Affirmatively Furthering Fair Housing

- HUD published its proposed rule, “Affirmatively Furthering Fair Housing” on July 19, 2003
 - The rule proposes new regulations for the affirmatively furthering fair housing planning process by states, local governments, insular areas & PHAs [program participants]

Affirmatively Furthering Fair Housing

- Programs most affected: CDBG, HOME, HOPWA, Emergency Solutions Grants Program, Public Housing Programs (including Housing Choice Vouchers)
- Multifamily O/As are not directly affected by the affirmatively furthering fair housing planning process

Affirmatively Furthering Fair Housing

- HUD’s Summary Major Provisions:
 - Refines the current requirement that program participants complete an Analysis of Impediments (AI) with a more effective & standardized Assessment of Fair Housing (AFH)
 - Program participants would use the AFH to evaluate fair housing challenges and goals
 - Using benchmarks (regional & national) and data tools to facilitate the measurements of trends & changes over time

Affirmatively Furthering Fair Housing

- Improves fair housing assessment, planning & decision-making by providing data that program participants must consider in their AFHs
 - Helps program participants establish fair housing goals to address these issues & concerns

Affirmatively Furthering Fair Housing

- HUD will provide program participants and communities data about:
 - Patterns of integration & segregation
 - Racially and ethnically concentrated areas of poverty
 - Access to education, employment, low-poverty, transportation, environmental health
 - Disproportionate housing needs based on the classes protected under the Fair Housing Act
 - Data on individuals with disabilities and families with children
 - Discrimination

Affirmatively Furthering Fair Housing

- Explicitly incorporates fair housing planning into existing planning processes, the consolidated plan & PHA Annual Plan
 - Which, in turn, incorporates fair housing priorities & concerns more effectively into housing, community development, land-use & other decision-making that influences how communities / regions grow & develop

Affirmatively Furthering Fair Housing

- Encourages & facilitates regional approaches to address fair housing issues
 - Including effective incentives for collaboration across jurisdictions & PHAs and incorporation of fair housing planning into regionally significant undertakings, such as major public infrastructure investments

Affirmatively Furthering Fair Housing

- Brings people historically excluded because of characteristics protected by the Fair Housing Act into full & fair participation in decisions about the appropriate uses of HUD funds & other investments
 - Through a requirement to conduct community participation as an integral part of program participants' AFHs

Affirmatively Furthering Fair Housing

- Establishes an approach to affirmatively further fair housing that calls for coordinated efforts to combat illegal housing discrimination
 - So that individuals / families can make decisions about where to live, free from discrimination
 - With necessary information regarding housing options &
 - With adequate support to make their choices viable

Affirmatively Furthering Fair Housing

- On 9/17/13, NAHMA submitted comments on the proposed rule. It was recommended that:
 - HUD must clarify the rule to ensure that preservation of existing rental housing is encouraged
 - HUD should clarify the proposed certification requirement that grantees “will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.”
 - NAHMA would like clarification of “materially inconsistent”
 - The rule should be amended to include a safe harbor provision that would recognize grantees’ efforts and hold them harmless for factors outside of their control

Affirmatively Furthering Fair Housing

- HUD must provide an opportunity for a more thorough review of the nationally uniform data that “will be the predicate for and help frame program participants’ assessment activities.”
- HUD should carefully evaluate the administrative and compliance costs to the grantees in the context of sequestration and other federal budget cuts.

HUD’s Disparate Impact Rule

- “Implementation of the Fair Housing Act’s Discriminatory Effects Standard: Final Rule”
 - Effective March 18, 2013
 - Standard for evaluating claims that a “facially neutral practice” violates the Fair Housing Act
 - A “facially neutral practice” doesn’t appear discriminatory but may be discriminatory in its application /effect

HUD's Disparate Impact Rule

- 3-part burden-shifting test to determine if a practice has an unjustified discriminatory effect:
 - The charging party / plaintiff bears the burden of proving its prima facie case (legally sufficient to establish a fact or a case unless disproved) that a practice results in, or would predictably result in, a discriminatory effect on the basis of a protected characteristic

HUD's Disparate Impact Rule

- If the charging party / plaintiff proves a prima facie case
 - Burden of proof shifts to the respondent /defendant to prove that the challenged practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests
- If the respondent / defendant satisfies this burden
 - Charging party / plaintiff may still establish liability by proving that the interest could be served by a practice that has a less discriminatory effect

IRS Guidance Priority List

- The Treasury Department's Office of Tax Policy and the IRS use a Guidance Priority List each year to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices,
 - Industry stakeholders are invited to comment on the Guidance Priority List

IRS Guidance Priority List

- On May 1, 2013, NAHMA submitted comments regarding the 2013-2014 Guidance Priority List
 - NAHMA urged the IRS-Treasury to revise its interpretation of State housing agencies' authority to disapprove Utility Allowance estimation methods permitted under current policies
 - NAHMA also requested that the IRS-Treasury include harmonization of casualty loss policies for LIHTC properties on its 2013-2014 Guidance Priority List

Utility Allowances Submetering

- On August 7, 2012, IRS issued its proposed rule for Utility Allowances (UA) Submetering for LIHTC properties
- The proposed rule clarifies:
 - Utility costs are treated as paid by the tenant directly to the utility company
 - If the costs are paid for by the tenant
 - Are based on actual consumption in a sub-metered rent-restricted unit

Utility Allowances Submetering

- Which UA methods are permitted for units in mixed-finance properties
- The treatment of owners' administrative fees in the gross rents for submetering
- NAHMA signed on to industry comments generally supporting the changes made in the proposed rule

Utility Allowances Submetering

- However, the letter opposed the provisions of the proposed rule that:
 - Allowed state housing agencies to disapprove of the utility allowance calculation method
 - Granted state housing agencies the right to approve a utility submission by a licensed engineer
 - However, engineers are already licensed by the appropriate state authorities
- IRS held public hearing on the proposed rule on November 27, 2012 in DC

Buildings Damaged by Casualty Events

- Under current policies, casualties are treated differently depending on whether they are the result of a presidentially declared disaster.
- A taxpayer can continue to claim the LIHTCs for casualty events in presidentially declared disaster areas.

Buildings Damaged by Casualty Events

- However, properties that suffer casualty losses outside of these declared disaster areas operate under different terms
 - IRS code provides relief from recapture of previously earned credits if the building is restored by reconstruction or replacement within a reasonable time.
 - But it does not provide authority for claiming the credit during the time that the building is being restored.

Casualty Events

- On May 1, 2013, NAHMA submitted a letter requesting that the IRS-Treasury include the same casualty loss policies across the board for LIHTC properties on its 2013-2014 Guidance Priority List
- Properties should be able to continue to take the credits during the restoration period, regardless of whether or not the property is in a presidentially declared disaster area

RD Improper Payments Audit

- RD conducts the Improper Payments Information Act (IPIA) audit on the Section 521 Rental Assistance Program each year.
 - Official FY 13 error rate estimate: 1.79%
 - A couple errors found on medical deductions and income calculations

RD Improper Payments Audit

- File Documentation and paper work errors remain the primary IPIA concern for RD:
 - Incorrect certifications, certifications not signed, certifications not dated, documents not in files.
 - A hard copy of the cert must be signed by the tenant, even if there is an e-signature.

RD Improper Payments Audit

- Useful File Documentation Checklist in RD's 3560 Handbook
 - HB-2-3560 MFH Asset Management Handbook
 - Attachment 6-J Required Tenant File Documentation
 - See <http://www.rurdev.usda.gov/SupportDocuments/3560-2chapter06.pdf>

Tenant File Reviews During Supervisory Visits

- 3% error rate from tenant file reviews conducted since 10/1/12
 - Results of RD's supervisory visits are not reported under IPIA, BUT
 - RD remains concerned about regulatory compliance by management companies
 - Urges O/As to establish an internal quality control process for file documentation

RD Recovery Audits

- RD hired a contractor to review RA payments from FY 10, 11 & 12
 - Payments matched against death master file database
 - 400 cases in which RA was paid for deceased tenants for more than 45 days
 - Restitution sought from O/As
 - RD will issue guidance reminding O/As that households must recertify within 45 days after a death
 - RD has collected \$1.2 million in recovered improper payments from tenants

RHS Proposed Civil Money Penalties Rule

- Programs covered under proposed rule:
 - Section 514 & 516
 - Section 515
 - Section 521
 - Section 542

RHS Proposed Civil Money Penalties Rule

- Civil money penalties could be imposed against any individual or entity
 - Who knowingly & materially violate or participate in the violation of:
 - Provisions of the covered programs or
 - Agreements made in furtherance of those programs

RHS Proposed Civil Money Penalties Rule

- These individuals or entities subject to the penalties include:
 - Owners
 - Officers
 - Directors
 - General partners
 - Limited partners
 - **Employees**

RHS Proposed Civil Money Penalties Rule

- Violations include:
 - Submitting false information to the Secretary
 - Providing the Secretary false certifications;
 - Failing to submit information requested by the Secretary in a timely manner;
 - Failing to comply with the provisions of applicable civil rights statutes & regulations;

RHS Proposed Civil Money Penalties Rule

- Violations include:
 - Failing to maintain the property subject to loans made or guaranteed in good repair & condition, as determined by the Secretary
 - Failing to provide acceptable management for a project which received a loan made or guaranteed under the Act that is acceptable to the Secretary

RHS Proposed Civil Money Penalties Rule

- NAHMA commented on the proposed rule changes:
 - The rule is too broad
 - It completely fails to define the number and scope of penalties
 - If RHS proceeds, the rule must include an up-front itemization of:
 - Things the Agency will seek penalties for and
 - Scope of the penalties

Management Fee Freeze

- RHS froze management fees for FY 2014
 - This will be the 3rd year in a row that management fees have been frozen
- RHS has cited shortfalls in the Rental Assistance program as the cause for 2014's freeze
- NAHMA strongly opposes the freeze
 - Managers should not be punished for federal budget decisions outside of their control

Management Fee Freeze

- RHS did not increase management fees for rural housing properties in FY 2013 due to:
 - The increased improper payments audit error rate in the RA program for FY 2012
 - From 1.48 percent in FY 2011 to 3.44 percent in FY 2012
 - The increased number findings in the Multi-Family Integrated System (MFIS)
- RHS's improper payments survey was not an appropriate criteria to determine whether a specific management agent received a fee increase in 2013
 - It is irrational to punish all O/As for errors of a few
