NCSHA

National Council *of*
State Housing Agencies

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA) thanks you for the opportunity to comment on the Rental Policy Working Group's (RPWG) Alignment Initiative. This is an important effort that holds the promise of creating greater ease and efficiency in the administration of a variety of federal rental housing programs and the opportunity to enhance cooperation and collaboration amongst the many actors that participate in the production and preservation of affordable rental housing. While NCSHA supports the concept of streamlining federal rental housing programs and aligning overlapping or conflicting rules and practices, it is critical to maintain the flexibility needed for federal programs to meet the needs and priorities of each state.

NCSHA represents state Housing Finance Agencies (HFAs) that operate in every state, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. They administer the Low Income Housing Tax Credit (Housing Credit) and issue private activity bonds (Housing Bonds) to finance affordable housing for renters and home buyers. HFAs also administer a wide range of other affordable housing and community development programs, including HOME, Section 8, downpayment assistance, homebuyer education, loan servicing, homeless assistance programs, and state housing trust funds.

NCSHA is a national nonprofit, nonpartisan Washington, DC-based association that represents the interests of state HFAs before the Administration and the Congress. In addition to its policy and advocacy work, NCSHA provides HFAs education and training and facilitates best practice exchange among them.

Since 1993, NCSHA has issued Recommended Practices to provide guidance, foster consistency where possible, and maintain a proactive approach to administration of the Housing Credit. These recommendations provide additional guidance in areas covered by federal statute or regulation, such as the market study requirement, and in areas where there is no federal requirement, such as financial reporting and appraisals. States have responded well to this voluntary process and we hope that the alignment initiative will build upon these recommended practices and suggest new areas for voluntary alignment where appropriate without creating new federal requirements or mandates.

Specific comments on the individual alignment areas are provided below.

Physical Inspections

While NCSHA supports the goal of reducing the number of annual physical inspections conducted on properties with multiple funding sources, the proposal raises several concerns which we urge HUD to address as the physical inspection pilot programs currently underway in six states proceed and when they are concluded.

The proposal as drafted recommends that HFAs be designated as the lead inspection agency in most multiple funding situations. This recommendation has the potential to create an enormous burden on HFAs at a time when states are already experiencing severe budget cuts and staffing shortages. An additional concern is the long-term implications for HFAs of being the primary inspection agency for units funded by programs which HFAs do not administer and whose inspection requirements could be changed at any time by the administering federal agency. We suggest evaluating the results of the pilots before moving further in this direction.

HFAs primarily utilize the UPCS inspection protocol while HUD uses REAC. We urge you not to mandate the use of REAC over UPCS as suggested in the proposal. One suggestion that was raised at the January, 2011 meeting between HFAs and federal representatives in Washington DC and which should be explored further was for HUD to be the lead inspection agency on multi-funded properties. HUD could then share its reports with HFAs who have the flexibility to incorporate HUD's findings into their existing processes and undertake any necessary follow up inspection measures on aligned properties.

The short timeframe for undertaking the pilot projects is also a challenge. We suggest lengthening the time allotted to states for conducting pilot inspections to permit more inspections to be covered, take into account the seasonal nature of this work in some states, and capitalize on the many hours of preparatory work devoted to getting the pilots up and running.

Finally, excluding the HOME program from this initiative will considerably diminish the goal of alignment. States have successfully leveraged the HOME program with the Housing Credit on thousands of properties across the country, however, the HOME program's inspection requirements often differ from other programs. To more effectively align physical inspections of rental properties, HUD should communicate directly to the HOME Participating Jurisdictions and bring them into the alignment process.

Income Reporting and Definitions

The proposal correctly points out that even when various programs employ the same theoretical definitions of income, the amounts determined may vary due to differential access to relevant data. For example, HUD has access to the Enterprise Verification System (EIV), a tool that is not available to other agencies or to property managers. Aside from permitting wider access to EIV, the solution to this problem is unclear. We suggest further discussion of this issue is warranted to facilitate better access to income information.

Financial Reporting

While the Housing Credit is not governed by federal financial reporting requirements, reducing duplication and unnecessary cost burdens with regard to financial reporting are important goals and we look forward to further discussion in this area.

Common Energy Efficiency Requirements

States have been extremely proactive in incorporating energy efficiency criteria into the Housing Credit program. By 2008, when Congress created an energy efficiency requirement under Section 42, almost all Housing Credit allocating agencies already required applicants to at minimum meet Energy Star requirements, with many incorporating significant additional threshold or point-scoring provisions in this area.

As with other areas of RPWG focus, a lack of uniformity in how states incorporate energy efficiency principles should not necessarily be seen as inefficiency. Often different energy efficiency requirements or standards are a response to the vastly different energy and conservation needs of individual states and we urge the RPWG to support flexibility here not only in terms of the Housing Credit but also with regard to other federal programs that often partner with the Credit.

The proposal suggests that Treasury work with NCSHA to determine how states are incorporating energy efficiency into their qualified allocation plans. NCSHA and the HFAs look forward to this opportunity to demonstrate how states have prioritized this goal and are proven leaders in the development of sustainable and energy efficient affordable housing.

Appraisal Primer

There is no federal requirement under the Housing Credit program for states to mandate appraisals in their administration of the program. Nevertheless, HFAs adopted a voluntary Recommended Practice in 1998 to review the acquisition price on which Housing Credits are allocated so that Credits are not being allocated to overvalued properties.

We urge that whatever action the RPWG takes, it recognizes the proactive approach that HFAs have taken in this area and refrains from requiring any single standard over another or setting mandates that do not currently exist.

Market Study Standards

NCSHA does not support the adoption of a single national standard of practice for market studies.

States have been refining their market study practices since NCSHA originally adopted a Recommended Practice in this area in 1998. In fact, the NCSHA Recommended Practice preceded the statutory market study requirement in the Housing Credit program. In 2010, NCSHA enhanced its market study Recommended Practice to incorporate current HFA and industry practices. The revised recommendation includes significantly more detail than previous versions, reflecting more than a decade of state and industry experience with Housing Credit market studies.

In the 25 years that HFAs have administered the Housing Credit, they have acquired significant knowledge about the markets in their states, and have developed market study standards based on their long experience of what works in various localities. A "one size fits all" national model would not work in all markets and we urge the RPWG to refrain from imposing one.

Subsidy Layering Review

States take seriously their responsibility to ensure that Housing Credit developments receive only as much Credit as necessary for the financial feasibility of the project and that scarce public resources are not being squandered. In 1992, Congress recognized this by delegating responsibility to perform subsidy layering reviews on Housing Credit properties with HUD assistance to the state HFAs.

We look forward to seeing the results of the subsidy layering pilots currently underway and exploring ways in which the subsidy layering review process can be strengthened.

Capital Needs Assessment

There is no federal requirement to perform a capital needs assessment under the Housing Credit program. However, consistent with their proactive administration of the program, states have created a Recommended Practice in this area to require any award of Housing Credits for rehabilitation of a property to be preceded by and take into account a capital needs assessment by a competent third party or by Allocating Agency staff if so qualified.

We encourage the RPWG to review the NCSHA Recommended Practice, which was developed through consultation with experienced HFA staff and industry practitioners, and we urge you to maintain flexibility in the creation of the CNA template tool that is contemplated under the proposal.

Improve Sharing of Data on Owner Defaults

While this proposal only discusses the importance of data sharing between HUD and USDA, HFAs experience many of the same challenges with regard to obtaining accurate information about owner defaults, past noncompliance, track record of new applicants, and so forth. We urge the RPWG to include NCSHA and our members in future discussions in this area.

Fair Housing Compliance Enforcement

We agree with the need to enhance the quality control of noncompliance reporting to the IRS. While states make every effort to report noncompliance of which they have been informed by HUD or the Department of Justice, they have no way of knowing about lawsuits or charges that may exist but were never communicated to them. If a mechanism is created whereby HUD and DOJ report directly to IRS, it would be helpful to ensure that HFAs are also kept apprised.

With regard to the broader issue of substantive civil rights policy concerns, we disagree with the tone of the proposal which presumes that states are unwilling or reluctant partners in the effort to further fair housing. Nevertheless, we completely agree on the need to create an open forum for cooperative dialogue and we welcome the input of the RPWG in this area. We believe that this important subject calls for consistent and substantive discussion that explores the real-life complexities of this issue and creates practical solutions for implementing the fair housing mandate.

Thank you for your consideration of our comments. Please do not hesitate to contact me if we can provide additional information.

Sincerely,

Garth B Rieman

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives