



May 1, 2011

Regulations Division
Office of General Counsel
Department of Housing and Urban Development (HUD)
451 Seventh Street, SW
Washington, DC 20410-0500

RE: [Docket No. FR-5506-N-01] Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

Ladies and Gentlemen:

Stewards of Affordable Housing for the Future (SAHF) appreciates the opportunity to respond to HUD's Request for Comments published in the *Federal Register* on March 2, 2011. The request seeks comments regarding procedures HUD should establish to identify rules that have become "obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive." The Request also invites commenters to identify specific rules that meet this description and should be modified or eliminated

SAHF's nine members are large nonprofit organizations that acquire, rehabilitate and preserve multifamily rental properties for low-income families, seniors, and disabled individuals. SAHF members are committed to long-term, sustainable ownership and continued affordability of these properties. Together, SAHF members own and operate housing in over fifty states and territories, providing homes to approximately 90,000 low-income households. Their charitable purposes, together with their extensive experience as developers and operators of affordable multifamily housing, give SAHF members a deep interest in assuring that HUD's rules, regulations and policies facilitate, rather than hamper, their ability serve their clients.

A preliminary comment: The *Federal Register* notice talks about reviewing existing "regulations" and requests that commenters cite the *Code of Federal Regulations* section number for any regulation identified as in need of improvement. However, as a practical matter, many of the most important rules and policies affecting affordable housing providers are not found in the C.F.R., but rather in the Handbooks, Guides and Notices published by the Department, and sometimes even in less codified policies. A good example is the implementation of provisions of Section 524 of Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), relating to rent setting and contract renewal for project-based Section 8 Housing Assistance Payment contracts. 24 C.F.R. § 402 contains a mere nine subsections occupying less than four

pages of the C.F.R., and much of that merely restates the statutory requirements. Most of the numerous rules and procedures that affect owners and tenants are set out in the voluminous Section 8 Renewal Policy Guide Book.

Most of the other rules that have a major impact on the business of SAHF members also have their origins outside the C.F.R., including the Multifamily Accelerated Processing Guide (MAP Guide), Housing Handbooks and Housing Notices. For this reason, most of specific rules discussed in the remainder of this comment letter are to be found in these documents.

Regulatory review process

The *Federal Register* notice solicited comments relating to the desirability and structure of periodic review of HUD's regulations to identify those which require attention. SAHF applauds the idea of institutionalizing the review process. We suggest that HUD solicit public comments on new regulations three years after they first go into effect, with further reviews every five or ten years thereafter in order to maximize the efficiency and effectiveness of the regulatory framework.

Comments on specific HUD rules and regulations

SAHF members are committed to preserving the affordable housing stock by maintaining the long-term physical and financial integrity of existing properties. Our comments reflect the need for clear and consistent policies that encourage preservation-minded owners and purchasers and provide the tools to recapitalize properties and position them for long-term affordability. Most of the following comments relate to rules, or ambiguities in rules, that make it more difficult, time-consuming and/or expensive for SAHF members to acquire, refinance and rehabilitate existing affordable multifamily properties for occupancy by their low-income clientele. SAHF has also included comments on the effect of some HUD rules on the efficient, day-to-day operation of these properties.

1. Discontinue requiring repayment of M2M notes upon sale to a Qualified Nonprofit Purchaser

Proposal HUD should revise Housing Notice 10-22 to discontinue requiring the repayment of Mark-to-Market (M2M) notes in connection with assignments of notes and transfers of property to Qualified Nonprofit Purchasers (QNP Transfers).

Discussion One of the most successful aspects of the M2M program has been the ability to arrange for transfer of restructured properties to tenant organizations or tenant approved nonprofit or public owners. In connection with QNP Transfers, HUD is authorized to forgive or assign HUD-held, subordinate mortgage financing (Mortgage Restructuring Notes, and Contingent Repayment Notes, collectively M2M Notes) to the nonprofit purchaser.

The terms under which HUD has been processing M2M loan assumption and subordination proposals are now contained in Notice 10-22. This Notice provides both underwriting terms for the new first mortgage loan and repayment requirements with respect to the M2M Notes. The Notice requires, in HUD's discretion, a partial repayment of the M2M Notes (Partial Repayment) equal to one half of the sales proceeds otherwise realizable by the seller or, if greater, 1/3 of the total proceeds – including developer fee – otherwise realizable by the seller and purchaser jointly. This Notice has been incorrectly implemented by HUD so as to impose Partial Repayment even for QNP Transfers.

Under this policy, even though HUD is giving up ownership of the M2M mortgages in a QNP Transfer, it has imposed the same Partial Repayment requirement as it would in a non-QNP transaction where it retains ownership of the mortgage. As explained by OAHP staff, the rationale is that HUD approves the assumption of the M2M mortgages first, and the assignment of the M2M mortgages to the nonprofit second, and accordingly applies all assumption requirements, including Partial Repayment, to their approvals.

However, HUD's actual practice in closing these transactions does not support this rationale. Typically, in order to avoid problems related to the real estate doctrine of "merger," HUD has first assigned ownership of the M2M Notes to the QNP, which then immediately reassigns them to a nonprofit affiliate. HUD then permits the real property to be transferred to the QNP and the new first mortgage financing to be closed. At the closing, the M2M mortgage is assumed by the new owner. Thus, at the moment when the transfer and refinancing of the property occur, HUD actually has no further interest in the M2M Notes, and has no reason to protect its own interest by requiring any prepayments of those notes.

As applied to acquisition of M2M properties by QNPs, the Partial Repayment requirement is problematic for two reasons: 1) it is contrary to the underlying statutory intent of the QNP Transfer program – to encourage the transfer of HUD-assisted restructured properties to qualified nonprofit entities; and 2) in almost all cases, the net economic effect of the Partial Repayment is a transfer of state- or locally-controlled affordable housing resources to HUD, instead of allowing those resources to contribute to the rehabilitation of the property by a preservation-oriented purchaser. The knowledge that their financial contributions will go to repay HUD rather than to rehabilitate the property tends to discourage state and local governments from allocating their scarce resources to the affected property.

Partial Repayment is not a statutory requirement under MAHRA; it is purely an administrative requirement, which may be appropriate when implemented in connection with approving a proposed acquisition and assumption by a for-profit purchaser. However, when applied to a QNP acquisition, it is contrary

to Congressional intent and the spirit of the QNP Transfer program. HUD could solve this problem by issuing new guidance that supplements Notice 10-22 and makes it clear that Partial Repayments of M2M Notes are not required in connection with QNP transfers where the HUD-held notes are assigned to a nonprofit entity.

2. Eliminate the three-year time limit for nonprofit debt relief for M2M property purchases

Proposal HUD should amend Appendix C of the M2M Program Operating Procedures Guide (OPG) and the Standard Restructuring Commitment form to eliminate the HUD-imposed time limit on the period during which a qualified nonprofit purchaser may secure debt relief when buying a previously restructured property.

Discussion Section 517 of MAHRA specifically authorizes the assignment and/or forgiveness of HUD-held secondary debt if the mortgaged property “is acquired by a tenant organization or tenant-endorsed community-based nonprofit or public agency.” In creating this debt relief incentive, Congress recognized the value of nonprofit stewardship, the potentially stifling effect of this burdensome debt, and the fact that the incentive would enable nonprofit purchasers to raise funds to buy out old owners and to leverage significant outside resources for rehabilitation. However, an arbitrary HUD policy, documented only in the OPG and associated forms, undermines the value of this powerful incentive.

As set out in the OPG’s Appendix C and Standard Restructuring Commitment form’s Paragraph 18, HUD’s policy limits the period of time during which a nonprofit may secure debt forgiveness or assignment to three years after the issuance of the restructuring commitment. In reality, property owners who have been through restructuring may not immediately have any intention of selling their property, and often require more than three years to arrive at the decision to sell and then to find an interested and qualified buyer. Thus, HUD’s time limit seriously undermines the utility of the incentive created by Congress. It is also quite common to find that it takes more than three years for owners to realize that the rehabilitation funded at the time of restructuring was insufficient to meet the long term needs of the property, and that more capital investment will be required to maintain the property as decent, safe and sanitary housing. As time passes and the M2M program ages, more and more situations will arise in which tenants, nonprofits and public agencies will be hampered in the purchase of previously restructured properties because HUD declines to make available the Congressionally-authorized debt relief. If the best outcome for the property and its tenants at the time of a proposed sale is transfer to a nonprofit purchaser, then HUD should facilitate that outcome, regardless of how many years have passed since the M2M restructuring transaction.

3. Broaden the availability of preservation transactions by allowing early termination of pre-MAHRA HAP contracts and entry into new, 20-year contracts

Proposal HUD should revise Chapter 15 of the Section 8 Renewal Guide to expand the range of projects that are eligible for preservation under this chapter by allowing a wide range of pre-MAHRA Section 8 contracts to be terminated prior to their contractual expiration date and then be renewed for 20-year terms. HUD should consider making this option available only in the context of a preservation transaction or where a purchaser or owner agrees to extend current affordability restrictions.

Discussion Many multifamily projects assisted by project-based Section 8 contracts are twenty to forty years old, and these older properties may require substantial rehabilitation if they are to be preserved as high-quality affordable housing. In addition, many owners of properties in strong real estate markets, for financial or other reasons, can be expected to opt out of the Section 8 program when their current contract expires and to permit their properties to be converted to market-rate rentals or condominiums.

Preservation-oriented organizations, including SAHF's members, are interested in acquiring and rehabilitating these properties and preserving them for long-term affordable rental housing. However, lender and investor uncertainty as to the future status of the project's rental subsidies, and in some cases, the inadequacy of current housing assistance payments, can make it difficult to obtain necessary debt and equity financing for these preservation transactions. The solution requires an early termination of the existing HAP contract and renewal with a longer-term rental subsidy contract that will provide support for the necessary financing.

Serious problems are caused by Chapter 15-4(B)(4)(a) of the Renewal Guide, which bars early termination of "a non-MAHRA Section 8 contract" that "is not eligible to renew in HUD's current fiscal year." This provision precludes the sale, preservation and redevelopment under Chapter 15 of projects receiving Section 8 assistance under state housing finance agency HAP contracts with several years still to run before their final expiration date. There is no statutory requirement for this treatment, and SAHF understands that HUD has occasionally approved the early termination of state agency contracts, with owner and state agency consent. The Renewal Guide should be revised to clarify for preservation motivated owners and local HUD offices that such a consensual, early termination is a generally available tool, which can take advantage of current interest in preserving these properties, rather than risking loss of affordability in the near future when HAP contracts and state agency financing finally expire.

Once existing contracts are allowed early termination, those contracts should be renewed with 20-year terms. A 20-year renewal period is vital to helping preservation deals acquire financing. In the experience of SAHF members, equity investors and underwriters of private mortgages see these longer HAP contracts as necessary to lower default risk to a tolerable level. Although investors and underwriters recognize that HAP contracts are still subject to appropriations risk, a 20-year contract creates sufficient investor confidence in the economic viability of the project to allow transactions to move ahead.

4. Allow the early termination of ELIPHA Section 8 contracts to promote preservation.

Proposal As a related matter to Comment 3 above, HUD should also allow the early termination of Section 8 contracts by projects that participated in the ELIPHA program when the owner requests such termination, and the early termination leads to a preservation of the project as affordable housing.

Discussion HUD has taken the position that the mandatory renewal requirements of Section 524(e)(1), requiring HUD to renew ELIHPA benefits to owners “upon expiration of a Section 8 contract for assistance,” precludes the earlier termination renewal of the Section 8 contract. We believe this analysis is flawed and counter to the intent of the statute. Early termination and simultaneous extension of the Section 8 contract for 20 years (subject to appropriation) is not inconsistent with the Secretary’s obligation to renew preservation contracts. The over-arching intent of MAHRA unequivocally supports extensions of contracts subject to appropriation. Many ELIHPA projects are nearing the end of their restriction periods, and preservation is most important with respect to those that are most likely to exit the Section 8 program upon expiration of restrictions. The replacement and extension of these contracts now, when owners are still in their restricted period and willing to consider sale to a preservation purchaser, is critical to attracting the new financing that is necessary to preserve worthy projects.

5. Allow distributions from sale proceeds to nonprofit owners

Proposal HUD should encourage the rehabilitation of older properties by amending its Transfer of Physical Assets (TPA) rules to permit nonprofit owners to retain sale proceeds as they exit the field of affordable housing and transfer ownership to preservation-oriented purchasers.

Discussion Handbook 4350.1, Paragraph 13-19, restricts distributions to nonprofit parent organizations and specifically requires a nonprofit seller to place any sales proceeds into a trust fund to be used for purposes approved by the field office that promotes the expansion of the supply of low and moderate income housing. This requirement is effective so long as the property is subject to a HUD-held or insured mortgage.

However, many smaller nonprofit owners wish to leave the housing field as the needs of their aging projects outstrip the owner's financial capacity and expertise, or when housing is no longer one of their charitable interests. The inability of these smaller nonprofits, under HUD's current rules, to receive some sale proceeds can cause them to retain ownership until their obligations to HUD expire, instead of selling to a preservation-oriented purchaser. These owners realize that, at the end of the project's insured mortgage term or other period of HUD control, they can sell the properties and retain any proceeds free of HUD oversight of their use. In some markets, they will also gain by waiting until they can sell to market-rate redevelopers. If these owners were permitted to retain some sale proceeds for their current charitable missions, they would be more willing to sell their properties to preservation buyers while the HUD-held or insured mortgage is still in effect.

6. Increase the amount of rehabilitation costs permitted under the 223(f) mortgage insurance program

Proposal HUD should amend Handbook 4561.1, Paragraph 1-4(i), and the MAP Guide, Section 5-12(A)(2), to increase the estimated cost of required repairs permitted under the 223(f) mortgage insurance program above the current 15 percent cap.

Discussion The Section 223(f) program insures mortgage loans for the purchase or refinancing of existing multifamily rental housing. This program is vital to financing preservation transactions, which usually involve older properties requiring costly repairs and upgrades. In many cases, the 15 percent cap is insufficient to permit the owner to address all of the rehabilitation needs of the property. By limiting investment for physical repairs, the cap can also shorten the economic and physical life of the property. As there are no statutory constraints, the Section 223(f) program should offer a more flexible approach that weighs the property's needs and income potential. Instead of capping the rehabilitation costs at an arbitrary percentage of total cost, the permissible rehabilitation level should permit addressing as many of the property's physical needs as possible, consistent with its projected post-rehabilitation revenue stream.

7. Allow a seller to take back a second mortgage on FHA-financed preservation transactions when the mortgage is fully subordinated

Proposal HUD should modify 24 C.F.R. § 200.71 to make it clear that fully subordinated, purchase money mortgage notes may be used in connection with the purchase and rehabilitation of multifamily properties financed with FHA-insured loans.

Discussion The regulations state that projects to be granted FHA-insured mortgages must generally be free and clear of all other liens, even fully subordinated liens. Two express regulatory exceptions are made: subordinate loans up to a limited amount may be permitted if the prime loan is insured under Section 223(f) of

the National Housing Act, and subordinated loans may also be permitted if is made or held by a Federal, State or local government instrumentality. While 24 C.F.R. § 200.71(c) gives the Commissioner discretion to permit other subordinated mortgages in unspecified circumstances, it is the experience of SAHF members that this discretion is applied inconsistently at best, with many HUD offices refusing ever to consider such junior financing.

HUD's historical unwillingness to utilize its regulatory discretion to permit secondary financing makes it difficult or impossible to utilize FHA mortgage insurance in many acquisition/rehabilitation transactions financed with tax credits. The specific regulatory exceptions noted above do not apply, as the properties to be rehabilitated are usually being purchased from a private seller, not a public entity, and most of the properties to be preserved require more rehabilitation than is permissible under the Section 223(f) program.

Typically the buyer and seller wish to set a purchase price equal to the appraised, as-is fair market value of the property, as permitted by the tax credit rules. However, if the purchase price must be paid all in cash because of the subordinate financing ban, the remaining funds will often be insufficient to cover all of the renovations that should be completed as part of the recapitalization and that are usually demanded by investors.

Alternatively, if the seller waives its right to future recovery of a portion of the purchase price from future cash flow or transaction proceeds, thus reducing the price below market value, this will have the effect of artificially reducing tax credit basis and thus tax credit equity and makes the property less attractive to tax credit investors. This policy drives sponsors to select non-FHA financing as the primary financing for tax credit projects.

A liberalized policy on this point would not increase risk to FHA insurance funds. Under the terms of the standard form of promissory note required by HUD on those occasions when it does permit secondary financing, the note given to the seller would be fully subordinated in all respects and would not adversely affect the property's operating economics, as it would be payable only from any cash available after all senior financing and all other project obligations have been paid. Moreover, the holder of the subordinated note would have no right to institute default or foreclosure proceedings for so long as the insured note was in effect. The risk of excess subsidy is avoided by the fact that the purchase price cannot exceed the property's as-is, fair market value.

By Notice or Handbook revision, HUD should utilize its discretion under the existing regulations to make FHA mortgage insurance available for the acquisition and substantial rehabilitation of properties acquired by tax credit purchasers where a portion of the purchase price is evidenced by a

subordinated mortgage in favor of the seller, provided that the purchase price of the property does not exceed its current appraised fair market value.

8. Reduce the burden on preservation buyers by easing requirements to recreate a delinquent seller's missing financial statements

Proposal HUD should revise or clarify its TPA rules to ease the burden on preservation buyers of recreating the seller's missing financial statements for years prior to the year of sale.

Discussion Regulations under 24 C.F.R. § 5.801 require that the property owner prepare and submit an annual financial statement to HUD. As currently interpreted in the TPA context, this requirement can result in an excessive and unjustifiable burden on nonprofit organizations that purchase older, sometimes badly-run properties with the intention of rehabilitating and preserving them. The rules governing a TPA transaction in Handbook 4350.1, Chapter 13, Appendix A, require delivery of an "interim financial statement," which would normally only be an unaudited statement for the partial fiscal year immediately prior to the sale. However, if the seller has been delinquent in submitting financial statements, HUD office interpretation of this rule often leads to the buyer becoming obligated to re-create and submit the seller's prior years' financial statements. Requiring the buyer to recreate the seller's financial statements is a costly, time-consuming and sometimes impossible requirement that makes it more difficult to rescue aging properties, without bringing any corresponding public benefit. HUD should revise these rules to give HUD offices discretion to permit a TPA transaction to proceed without requiring an after-the-fact recreation of the seller's delinquent financial statements

9. Delay physical inspections of properties undergoing rehabilitation until rehabilitation is complete

Proposal HUD should expand the discretionary authority it recently granted to Hub Directors in Housing Notice 10-17, so as to authorize postponement of physical inspections by the Real Estate Assessment Center (REAC) when a property is about to undergo or is in the midst of rehabilitation

Discussion In Notice 10-17, HUD grants the Hub Director the authority to schedule REAC re-inspections when a property has received a failing grade on a first or second inspection. However, there is another area where scheduling flexibility would be equally helpful. When a preservation purchaser is actively seeking or has obtained HUD's approval to acquire and rehabilitate an aging multifamily property, such properties should not be subject to regularly-scheduled physical inspections until the rehabilitation is complete. Otherwise, both the inspections and the required immediate repairs of deficiencies increase costs, result in duplication of efforts, and delay the completion of the full rehabilitation.

TPA rules under Handbook 4350.1 already require a rigorous inspection process and a determination of the property's current physical condition before a transfer will be approved. As the Field Office has already inspected the transfer property in compliance with TPA rules and is monitoring the project's progress on rehabilitation, scheduling REAC inspections during the rehabilitation period wastes time and resources and duplicates the Field Office's efforts. HUD should grant the Hub Director the discretionary authority to delay REAC inspections until the rehabilitation is complete.

10. Implement an annual review process for Previous Participation Clearance for well-known, multi-project sponsors

Proposal HUD should amend 24 C.F.R. § 200.210 to 200.45 to create an annual review process for participants whose sponsors are already familiar to HUD and have a history of meeting their financial, legal, and administrative obligations. This annual review process should then exempt participants from submitting a Form 2530 for each new project to be undertaken.

Discussion HUD requires that an applicant disclose and certify its past performance in any multifamily housing finance, mortgage insurance or operating subsidy programs prior to any new participation in these programs. Form 2530 is used to make certain that prospective participants in multifamily housing properties assisted by HUD have a history of meeting their financial, legal and administrative obligations. Participants must complete a Form 2530 for each project, regardless of the number of Forms 2530 each participant has completed in the recent past, regardless of how many projects the participant is involved in each year, and regardless of whether the participant is a well-established, experienced institutional entity already familiar to HUD.

Form 2530 requests information relating to the "principals" involved in each project, but HUD's definition of the term often includes multiple tiers of business organizations. This demand for detailed information creates significant challenges for large, institutional organizations as these entities often have many layers of organizational structure/ownership. Form 2530 also requests large quantities of information about those organizations and requires multiple signatures that are often nothing more than a formality.

This review process consumes a great deal of time at every level, which can cause projects to be delayed or even scrapped altogether when project deadlines are not met. Moreover, its impact is greatest and most administratively burdensome on active HUD participants with properties in numerous jurisdictions, whose skill and resources HUD should be encouraging, not discouraging. Onerous filing requirements also stifle investor interest and participation. Potential investors often chose not to participate or limit their investment to less than 25 percent to avoid the 2530 review process. The creation of an annual review process for repeat investors would relieve the

current administrative burden for participants and HUD and would increase the willingness of potential investors to participate in HUD-regulated projects.

11. Extend income verification period for fixed-income families living in 202 and 811 projects

Proposal HUD should amend 24 C.F.R. § 891.410(g) to create an extended review period for families living on fixed incomes and residing in 202 and 811 projects. This extended review period would replace the annual income verification currently required for all 202 and 811 residents.

Background To ease the paperwork burden on owners and residents, HUD should create an extended review period based on the model proposed in Section 222 of the President’s 2012 Budget. This model creates a three-year review process for recipients of Section 8 rental assistance who are living on fixed incomes. The proposal also requires that the residents self-certify each year that their income has not changed beyond certain parameters set by the Secretary. SAHF members believe that an extended review period like the one proposed in the President’s Budget should be adopted for 202 and 811 projects. These supportive housing projects serve the elderly and disabled, populations that are most likely to be living on fixed income, such as Social Security, pensions or disability payments. Fixed-income residents living in 202 and 811 projects will not likely see their annual incomes rise except for cost-of-living increases, making a yearly income verification process unnecessary and costly. Extending the review period for these residents would greatly reduce the burden on both owners and residents, without sacrificing oversight over residents’ income levels. If the President’s proposed budget language on this issue is adopted, an extended review period for 202 and 811 projects would also make the income verification process more consistent among HUD project types.

12. Eliminate the “natural person” requirement and other unnecessary restrictions on purchasers formed as limited liability companies.

Proposal HUD should issue a new notice confirming that Housing Notice 95-66 is no longer in effect and that the reference to Notice 95-66 in Housing Notice 99-13 is no longer in effect. Adherence to these notices imposes outdated and unnecessary requirements on mortgagors formed as limited liability companies (LLCs).

Discussion Notice 95-66 was originally in effect for the period of July 25, 1995 through July 31, 1996, and was renewed until July 31, 1997. Thereafter, the notice was not renewed and no longer affects most HUD programs.

However, despite Notice 95-66’s expiration when Housing Notice 99-13 was adopted, Attachment 5 of Notice 99-13 required compliance with Notice 95-66

for LLC mortgagors to receive TPA approval as purchasers of properties with HUD-insured or held mortgages. Notice 99-13 expired on May 31, 2000, and it was renewed until December 31, 2001. Thereafter Notice 99-13 expired. Despite the expired status of these Notices, SAHF's members report that some field offices reviewing TPA applications continue to enforce their obsolete requirements against prospective purchasers formed as LLCs.

Notice 95-66 states that each member of the LLC must be a natural person. However, investors in tax credit projects are almost always large financial institutions, so that it is rarely possible for an LLC to comply with this "natural person" requirement. Notice 95-66 also states that all LLC members must execute a rider to the HUD note, mortgage, and regulatory agreement that makes them individually liable to HUD as guarantors, thereby defeating the purpose of the LLC as a limited liability business entity and driving away prospective equity investors.

The LLC-specific requirements found in Notices 95-66 are not included in the MAP Guide or other Handbooks affecting HUD transactions or new applications for mortgage insurance.

When it was issued, the terms Notice 95-66 reflected the fact that the legal implications of the LLC form were not well understood at that time, and HUD was understandably cautious. Today, however, LLCs are one of the most popular types of business entity for newly-established single-purpose businesses, especially in the real estate industry and affordable housing sector. Despite the popularity and wide-spread use of LLCs, many HUD local offices still treat LLCs differently than other business entities.

As a hybrid form of a corporation and partnership, LLCs should be governed by the same rules that HUD applies to those entities. HUD can solve this problem by explicitly repealing Notice 95-66 or by issuing new guidance that directs field offices to treat LLCs like other traditional business forms.

Other regulatory reform efforts

While appreciative of this opportunity to comment on specific HUD regulations and policies, SAHF also applauds the recent efforts by the Rental Policy Working Group, including HUD, Treasury, and USDA, to harmonize conflicting requirements for federal housing programs. On a daily basis, SAHF members contend with inconsistent requirements across their business operations, including conflicts associated with physical inspections; income definitions and reporting; operating budgets and financial reporting; energy efficiency standards; appraisals and market studies; subsidy layering and underwriting; capital needs assessments; and compliance. We look forward to working with HUD and these other federal agencies to recommend administrative and regulatory improvements to reduce or eliminate these burdensome and costly inconsistencies. SAHF also encourages the federal agencies to seek opportunities to involve state housing finance agencies in these harmonization efforts.

Thank you for your consideration of these comments. If you have any questions, please contact me at 202-737-5975, or SAHF's counsel, Bonnie S. Temple, at 202-737-5972.

Sincerely,

A handwritten signature in blue ink, appearing to read "William C. Kelly, Jr.", written in a cursive style.

William C. Kelly, Jr.
President