Comments for Proposed Information Collection (MORs)

The following comments and questions are submitted in response to the Notice published in the Federal Register on 12/6/2024, titled "60-Day Notice of Proposed Information Collection: Management Review of Multifamily Housing Programs: OMB Control No.: 2502-0178" (Document Number 2024-28564)

B. This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:

- As has been demonstrated repeatedly since their inception, Management and Occupancy Reviews are a necessary and critical tool for HUD to assess a project's performance, for improving accuracy of subsidy payments, for ensuring decent, safe and sanitary property conditions, and for generally ensuring/improving a property's compliance with HUD requirements.

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

- It is unclear what the estimate of 8.33 hours per response is supposed to represent. If it is intended to represent the complete time it takes to conduct an MOR from start (notification and desk review) to completion (corrective action and closure) it is not close to representing the amount of time required by either Contract Administrators (CAs) preparing, conducting, completing and closing the MOR or the time required by Owner/Agents to supply information, meet with CA staff for the site visit, and respond to findings with corrective action. The 8.33 hours noted may cover the time required for most site visits, not including travel time, but does not cover all of the preparation, report-writing, documentation, and follow up required for each MOR. Additionally, a higher-risk project is much more likely to require significantly more time for both parties. The MOR Streamlining Final Rule has created a higher percentage of MORs conducted for high-risk properties each year, thereby further increasing the average amount of time required on the part of both CAs and O/As. Furthermore, the MOR Final Rule has in many cases doubled the amount of time required for reviewing resident files, as each unit/household selected now often requires the review of multiple certifications going back to the last MOR.

Recommendation: HUD should survey both Contract Administrators and Owner/Agents for feedback to determine a more realistic estimated time for response.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

- Some of the questions in form HUD-9834, Part II, Category F are outdated and/or don't fully represent tenant/management relations.
  Recommendation: HUD should revise Part II, Category F of form HUD-9834, removing questions that are largely irrelevant today, such as those pertaining to renter's insurance and a neighborhood networks center. In their place, and following some elements of the HUD NSPIRE model, we recommend including questions that better represent areas related to an owner's efforts concerning unit conditions, tying in with work orders, safety, and resident protections that would be more logical factors in a resident's satisfaction. This could also be reflected by moving the question about complaint resolution from II-G, 1 to II-F, and adding additional details such as how quickly complaints were resolved.

- Per the MOR Final Rule, the Contract Administrator (CA) is required to review "all tenant files for each sampled file going back to the previous MOR." The form HUD-9834 Addendum A, required to be used for file reviews, includes a mix of 44+ questions, some of which relate to the file in general (e.g., household screening) and others of which relate to the specific tenant certification being reviewed (e.g., verification of income/expenses). It was not designed with the review of multiple tenant certifications in mind.
  Recommendation: HUD should clarify the documentation required for review of "all tenant files for each sampled file going back to the previous MOR." This could be accomplished by supplementing form HUD-9834 Addendum A to allow the questions that apply separately to each certification/recertification (mainly those questions in Sections D and E of the Addendum A) to be repeated onto a shorter, more consolidated form that does not duplicate questions that apply to the entire file/household.

- The MOR Final Rule reiterated a requirement from Chapter 6 of HUD Handbook 4350.1 that an MOR be performed within 6 months following a change in ownership or management. This is a useful idea; however, in order to ensure that the MOR captures mainly information that assesses the new Owner/Agent (O/A), rather than that of the former Owner/Agent, a modified time frame of within 9 months after the change in ownership or management may better capture this information. Firstly, this would allow time for more certifications/recertifications to be conducted by the new O/A and thus provide a broader selection of potential files for review that would be reflective of work actually performed by the new O/A. Secondly, since HUD allows a new O/A up to 90 days to obtain EIV access

and begin using it for the newly acquired property, conducting an MOR during the first 3 months after the O/A change risks revealing nothing about the new O/A's EIV usage and compliance. Thirdly, since the Final Rule already directs the scheduling of MORs such that it places constraints and creates potential inconsistencies in work volume (thereby impacting staffing levels,) a 9-month window allows better flexibility for Contract Administrators to schedule such MORs where work volume most allows for efficient use of staff. Finally, we have seen an increasing number of cases in which a new Owner or Agent is effectively in place, but there are delays in the approval process. In such cases, approvals are typically made effective retroactive to an earlier date. However, in the interim there are restrictions placed on the new Owner or Agent, including those such as a prohibition of transmitting/receiving HAP subsidy payments, access to Secure Systems/EIV, and signing lease agreements. During that interim time, if an MOR were conducted, there would be no examples of the new Owner or Agent's work to review for those restricted items, which defeats the purpose of the review after an Owner/Agent change. Therefore, the date from which the MOR is to be conducted should reference the latter of the approval date or the effective date of the change.
Recommendation: HUD should change the requirement to conduct an MOR within 6 months of a change in Owner/Agent to within 9 months of the latter of the approval date or the effective date of the change.

- One of the main factors in risk-based scheduling of MORs per the MOR Final Rule is the rating of the prior MOR. Given the relative weight of each MOR category, it is possible in some cases to have poor physical condition or poor file documentation or rent calculation yet still achieve an overall Satisfactory rating due to the strength of the other category ratings. In such a scenario, the overall Satisfactory rating would be an indicator of the next MOR occurring within 24 months, rather than 12 if the overall rating had been less than Satisfactory assuming a HUD risk assessment of Not Troubled. This creates a risk that a significant issue will go unchecked for longer than is prudent.
  Note: Although the MOR Final Rule affirmed that "Irrespective of a project's performance-based MOR schedule, HUD or a CA may inspect a project or assess its operations at any time, as merited based on documented concerns," this still requires a somewhat cumbersome process of approvals.
  Recommendation: The risk factor scheduling of the MOR Final Rule should be revised to indicate that an individual MOR category rating that is less than Satisfactory would also trigger a next MOR within 12 months.

- The tenant file review is the portion of the MOR site visit that takes the longest amount of time to complete. The MOR Final Rule requirement to review all tenant certifications going back to the previous MOR means that in many cases a longer site visit is required; for example, an MOR whose minimum file sample is

10 may in many cases now requires review of 20 or more certifications. This can extend the time required for a site visit to 2 days, whereas 1 day would have previously sufficed; in other cases, this can require 2 reviewing staff whereas 1 would have previously sufficed. This has a negative impact on efficiencies of travel, cost and scheduling of MORs: Whereas we previously were able to maximize travel costs and staffing efficiencies by scheduling 4 or more site visits per each staff member's MOR trip, the additional file review time changes some of these to 2 or 3 site visits per trip. Additionally, this sometimes creates lengthier findings related to file documentation and rent calculation/verification deficiencies, thus requiring more time to create and review the related findings in the MOR report and more time for corrections on the part of the Owner/Agent. This increases travel expenses for the CA and impacts staffing levels with no corresponding increase in MOR fees. HUD's compensation to CAs for MORs was reduced from $3,800/MOR to $3,400/MOR effective October 1, 2019; however, rising costs for staff and lengthier site visits and reporting times since then are not reflected in this compensation.
Recommendation: HUD should increase compensation for each MOR and increase the current cap on travel contingency fees.

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

- HUD does not allow the CA to require O/As to submit any documents prior to the MOR site visit. With the enactment of HOTMA, HUD requires owner discretionary policies to be spelled out in the property's Tenant Selection Plan, a document that for some properties can be 40-50 pages or more. Some of these policies have a direct impact on risk factors and other elements used to select files for review during the MOR site visit. If the CA is unable to determine these policies beforehand, it either adds more time required to adjust the selection of files during the site visit or diminishes the quality of the file reviews because there was insufficient information ahead of time to better select files for review. In other cases, this can result in an MOR site visit taking longer than the property's typical opening hours.
  Note: Tenant Selection Plans are documents HUD requires to be publicly available, as reiterated in Housing Notice 2023-10; as such, the Plans do not contain any personally identifiable information.
  Recommendation: Due to efficiency concerns outlined and respect for the time constraints of Owner/Agents during MOR site visits, HUD should allow CAs to request/require Owner/Agents to transmit a copy of the property's HOTMA-updated Tenant Selection Plans prior to the MOR site visit. (This is less important if a property has not implemented any HOTMA provisions for rent calculation/certifications yet but will be important for all sites once such HOTMA provisions have been implemented by the property.

- HUD currently requires both an annual MOR work plan and a quarterly plan/update. Each work plan requires coordination with HUD field staff and then approval by HUD headquarters staff. The most recent instructions indicated the quarterly update was only required if there are changes to the annual plan. However, some of the risk/scheduling factors by their nature change throughout the year. For example, HUD risk ratings are updated continually, and HUD provides a helpful monthly update of these risk rating changes. Another example is changes in property ownership and or management agent. In both cases, such changes prompt changes to MOR scheduling and the MOR work plan. Additionally, sometimes property conditions, such as a substantial rehab with resident relocations can impact MOR scheduling. Finally, HUD has introduced a mandatory postponement of MORs for 60 days after a presidentially declared disaster (PDD) is issued, regardless of whether or not an individual property was impacted by the disaster. The number of change factors that occur always prompts a quarterly update to the MOR schedule and work plan. Furthermore, the mandatory postponement in conjunction with a PDD creates a substantial administrative, and in some cases, financial cost for the CA, as some PDDs impact large portions of the covered state(s). This is understandable if all properties sustain damage, but in many cases, a sizable portion of properties in affected counties with mandatory postponements sustain little to no damage. In some cases, properties have prepared for an MOR, sustained little to no disaster event damage, and then were themselves inconvenienced by the PDD postponement.
  Recommendation: Given the many factors (MOR Final Rule and otherwise) that impact MOR scheduling changes, HUD should eliminate the requirement for an annual plan and focus on quarterly plans only. Alternatively, HUD could simply spell out the spending limits for the year/quarter and allow CAs to schedule MORs as outlined by HUD requirements and in consultation with HUD field staff without requiring additional approvals. HUD Headquarters could then still confirm at the time of MOR invoicing that the MORs were scheduled according to the risk-based model set out by the MOR Final Rule.
  Recommendation: HUD should proscribe a more tailored approach to MOR scheduling with respect to PDDs, only requiring MOR postponements when a property sustained damage or was substantially impacted by the disaster associated with the PDD.

Respectfully,

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