NCSHA

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Regulations Division, Office of General Counsel
U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Room 10276
Washington, DC 20410

RE: Docket No FR–5881–P–01, RIN 2502–AJ35
Section 542(c) Housing Finance Agencies Risk-Sharing Program: Revisions to Regulations

To Whom It May Concern:

On behalf of the state Housing Finance Agencies (HFAs) it represents, the National Council of State Housing Agencies (NCSHA) appreciates the opportunity to comment on the Department of Housing and Urban Development's (HUD) proposed rule, "Section 542(c) Housing Finance Agencies Risk-Sharing Program: Revisions to Regulations." We also thank HUD for the earlier exchanges with it and several of our HFA members that helped inform the proposed rule.

The FHA-HFA Risk-Sharing Program is an important tool in financing affordable multifamily housing. We commend HUD for proposing changes to the program to improve its functionality, better align it with current industry and HUD policies and practices, and provide greater flexibility for program participants. We believe HUD's proposed rule will make the program even more effective in preserving and producing affordable housing at even less risk to the federal government, especially if HUD amends it to take into account the following comments.

<u>The Risk-Sharing Program Is Highly Successful</u>

NCSHA represents the HFAs of the 50 states, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. HFAs share a public-purpose mission of providing affordable housing to the people of their jurisdictions who need it. They have established a multi-decade record of safe and sound lending that has made it possible for millions of people of modest means to purchase their first homes or access affordable rental housing. They have achieved much of this work with the federal Low Income Housing Tax Credit (Housing Credit) and tax-exempt private activity Housing Bond programs, which HFAs administer in nearly every state.

Congress established the Risk-Sharing Program to increase and expedite FHA's multifamily mortgage production. It allows HFAs that meet rigorous financial standards to underwrite FHA multifamily loans in return for sharing the risk of losses on those loans. HFAs may obtain HUD's approval to participate in Level I, under which they agree to accept 50 percent or more of the risk of loss; and Level II, under which they agree to accept at least 10 percent but less than 50 percent of the risk of loss.

Since 1992, 35 HFAs have used the Risk-Sharing Program to finance over 1,160 loans, totaling nearly $7.5 billion in principal and supporting more than 126,000 affordable rental homes. Program loan default rates have been very low and premium revenue has exceeded claims, generating net revenue for the federal government. From FY 2013 to FY 2015, only three claims were filed under the Risk-Sharing Program, compared to 25 claims under full FHA multifamily insurance programs.

Revising the Risk-Sharing Program as HUD proposes will further maximize its potential. The proposed rule includes several technical amendments NCSHA supports, including:

- No longer referring to the program as a pilot;
- Updating application requirements to a rolling basis to reflect current practice;
- Amending the definition of "affordable housing" to meet the requirements of Section 42(g) of the Internal Revenue Code;
- Clarifying that the existing requirement that mortgages must be fully amortizing does not apply to construction loans; and
- Resolving inconsistencies in closing document requirements.

We offer the following additional comments on HUD's proposals.

NCSHA Supports "Substantial Rehabilitation" Definition Change

Current regulations define "substantial rehabilitation" as work that costs more than 15 percent of a project's value. This definition has resulted in disproportionate and negative impacts on developments in high-cost areas, particularly for projects involving only moderate rehabilitation. We support the proposed rule's provision that would define "substantial rehabilitation" as work that costs more than the FHA base per dwelling unit limit times the applicable high-cost factor and involves the replacement of two or more building systems.

Proposed Rule Provides More Flexibility for Equity Take-Out Loans

HUD's current Risk-Sharing Program regulations permit equity take-out loans as part of a sale to a new owner, but not for owners seeking to refinance. We commend HUD for recognizing the adverse effect this limitation has on affordable housing preservation and for proposing to allow equity take-out loans for refinance and acquisition deals, which would align the Risk-Sharing Program with other FHA multifamily programs and industry practice.

Strengthen the Program's Recognition of HFAs' Strong Underwriting Record

Current regulations generally require loan underwriting to use the lower of market or Section 8 rents. NCSHA supports the proposed change that would allow Level I HFAs to underwrite supportive housing developments using contract rents even when they exceed market rents, as permitted for Section 202 developments for the elderly. We recommend HUD extend this flexibility to situations in which the Risk-Sharing Program is used to finance loans under other programs, such as Mark-to-Market and Option 4 and some Option 5 LIHPRHA deals, that permit the same underwriting flexibility for non-Risk-Sharing loans.

NCSHA also urges HUD to reconsider the proposed change which allows it to withdraw program approval for Level II HFAs that do not adopt new underwriting standards, loan terms and conditions, and asset management and servicing procedures that HUD may establish every five years. Such termination seems harsh and inappropriate for HFAs that are otherwise performing under the program. We recommend HUD at least allow a reasonable transition period and establish some process HFAs can use to negotiate HUD's new standards and appeal a possible termination.

NCSHA supports the provision that would allow Level I HFAs to insure non-fully amortizing loans. This change would allow HFAs to follow standard industry practices and conduct more efficient lending executions.

We appreciate your consideration of these issues and are ready and willing to help make the highly successful Risk-Sharing Program even better.

Sincerely,

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives