



November 8, 2024

Julia R. Gordon  
Assistant Secretary for Housing - FHA Commissioner  
U.S. Department of Housing and Urban Development  
451 7th Street, SW  
Washington, DC 20410

## **HUD Draft Notice on Solar, Cell Tower and Rooftop Leases**

Dear Assistant Secretary Gordon:

The undersigned national associations represent for-profit and non-profit owners, operators, developers, lenders and property managers and housing cooperatives involved in the provision of rental housing, both affordable and conventional, along with the technology suppliers that are driving innovation and helping assist in addressing our long-term housing challenges. We are concerned the overly broad nature of this draft Notice could further restrict rental housing providers' ability to provide housing that is affordable because of the draft Notice's potential applicability to privately-owned rental housing that accept subsidies such as Section 8 Housing Choice Vouchers or are financed with loans insured by HUD. Even more troubling is that, while well-intentioned, the draft Notice could have a chilling effect on the deployment of solar technologies at a time of growing need for increased sustainability across the built world.

### **Housing Supply and Affordability Are Key**

There is a direct correlation between federal policies that support increases in housing supply and affordability and the willingness of developers and others to create that affordable supply. Many housing providers operate on narrow margins, with a majority of rental payments going to pay essential operating expenses, such as employee wages, mortgage payments (including required reserves for multifamily borrowers), property maintenance and contributing to local communities through property taxes.<sup>1</sup>

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<sup>1</sup> See e.g., NAA's Breaking Down One Dollar of Rent, available at [https://www.naahq.org/sites/default/files/naa-documents/dollar\\_of\\_rent\\_2022.pdf](https://www.naahq.org/sites/default/files/naa-documents/dollar_of_rent_2022.pdf)

The nation faces a housing affordability crisis. It is essential that we build housing at all price points to address critical housing needs. According to recent research commissioned by the National Multifamily Housing Council (NMHC) and National Apartment Association (NAA), the U.S. needs to build 4.3 million new apartment homes by 2035 to meet the demand for rental housing.<sup>2</sup> This includes an existing shortage of 600,000 apartments stemming from underbuilding due in large part to the 2008 financial crisis. Further, underproduction of housing has translated to higher housing costs – resulting in a consequential loss of affordable housing units (those with rents less than \$1,000 per month), with a decline of 4.7 million affordable apartments from 2015-2020.

It is becoming increasingly difficult to build housing that is affordable to a wide range of income levels. Unnecessary or unduly burdensome laws, policies and regulations at all levels of government prevent us from delivering the housing our country so desperately needs. Elevated regulatory costs, in particular, create a barrier to affordable housing supply. Recent research published by NMHC and the National Association of Home Builders found that regulation imposed by all levels of government accounts for 40.6 percent of multifamily development costs.<sup>3</sup>

New federal requirements will impact investment into and development of housing stock if there is a discernible change to the already-limited return on investment and the long-term viability of a property. Simply put, we are very concerned that, while well intentioned, additional regulation by HUD and the federal government in this space will hurt, not help, the affordable housing crisis in this country.

### **Impact of HUD’s Draft Notice on Solar, Cell Tower and Rooftop Leases**

When possible, rental housing providers have consistently deployed technologies to improve sustainability of their properties, lower costs and meet resident expectations and demand for environmentally conscious living. For instance, early adopters and champions for energy efficiency in the apartment industry catalyzed the green building movement by committing to change even when the path to green building was uncertain. With a growing consensus that cleaner air and water were foundational for healthy communities, these rental housing providers took on the effort to discover what was possible. Partnerships between individual developers, funders and other institutions impacting development enabled pilot projects and research that demonstrated green building was feasible on a wider scale, impactful for environmental and resident outcomes and good for business. Therefore, the use and expansion of solar technologies at rental properties, in partnership with third-party providers, became possible.

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<sup>2</sup> Hoyt Advisory Services, “Estimating the Total U.S. Demand for Rental Housing by 2035.” (2022), [www.weareapartments.org](http://www.weareapartments.org).

<sup>3</sup> National Multifamily Housing Council and National Association of Home Builders, “Regulation: 40.6 Percent of the Cost of Multifamily Development.” (2022) <https://www.nmhc.org/globalassets/research--insight/research-reports/cost-of-regulations/2022-nahb-nmhc-cost-of-regulations-report.pdf>.

To advance these goals, rental housing providers of all types may decide to lease their rooftops or areas of their property for solar technology deployments after weighing risk, safety, sustainability and other business decisions. Should a rental housing provider lease a rooftop, the housing provider carefully negotiates the terms of their agreements with the rooftop lessee. While a rental housing owner's interests are very closely aligned with the objectives put forward in this draft Notice, the HUD language outlined would impede negotiations where rental housing providers need further precision and specificity in certain rooftop leases. There is significant concern that if the HUD terminology comes to be treated as default language, owners may not be able to protect themselves as well as they can today.

Many of the negotiated terms are included in both the draft Notice Self-Certification form and the Lease Rider. Appendix B establishes the primary compliance requirements, introducing a standardized lease rider that could restrict owners' flexibility by enforcing uniform terms for solar, cell tower, and other rooftop leases. These prescriptive terms limit owners' ability to tailor agreements to property-specific needs, local conditions or supplier demands, reducing revenue potential and increasing compliance costs. The Notice mandates initial utility consumption and emissions benchmarking for solar installations, requiring significant resource allocation for data tracking, reporting, and compliance management. Moreover, the Notice mandates that owners outline the cost savings to residents from installed solar electric systems. This affects financial planning and could place additional strain on housing operators. Every dollar of additional revenue from commercial leases helps keep rental communities viable. The mandatory roof condition certification prior to lease execution could delay implementation, adding to upfront costs and complicating timelines, making it harder to quickly capitalize on leasing opportunities.

Further, the prescriptive insurance requirements outlined in the lease rider shift substantial liability to property owners, increasing exposure to risk such as the loss of participating properties due to judgments on claims by insurers and residents. This transfer of liability is likely to raise insurance premiums and lead to more complex risk management strategies, especially for potential equipment failures, roof damage, or liability during lease operations. Such provisions could pose a significant challenge to the undersigned associations' members, affecting overall profitability and operational strategy and lessen investment in our nation's housing stock and our collective sustainability efforts at a time of growing, significant need.

### **Impact on Privately-Owned Rental Housing**

We are concerned that HUD's draft Notice does not provide clear parameters over which HUD-subsidized or HUD-insured properties would be subject to the draft Notice. A privately-owned rental housing community with a small percentage of subsidized units should not fall under this draft Notice.

The draft Notice also threatens access to FHA mortgage insurance programs for multifamily builders in an already tight credit market. When funding is derived from a HUD grant program, such as HOME or CDBG, or when using FHA mortgage insurance for new construction or substantial rehabilitation projects, developers would be required to account for the added burden of

complying with compliance requirements around rooftop leases. HUD does not originate loans or fund projects through the FHA Multifamily Program. Rather, it insures those loans through the FHA. As such, projects insured by these programs should not be required to comply with the draft Notice.

Uncertainty created by promulgation of this draft Notice without modification or amendment would negatively impact development by reducing available ROIs to potential and existing investors barring clarification in the draft Notice that such properties are not included. If left as proposed, and while well-intentioned, we believe that the additional solar, cell tower and rooftop leasing requirements for multifamily properties using FHA mortgage insurance and/or HUD programs could impact delivery of much-needed units as we all try to address our nation's affordable housing challenges.

Again, we believe that HUD should take into account the unintended consequences of an overly broad draft Notice on meeting our shared goal of ensuring affordable, quality housing for all Americans. We appreciate the opportunity to share the views of rental housing providers with you on this important matter. We look forward to working with HUD as we continue to strive to meet our shared goal of making our communities more resilient.

Sincerely,

National Affordable Housing Management Association  
National Apartment Association  
National Association of Home Builders  
National Leased Housing Association  
National Multifamily Housing Council  
Real Estate Technology and Transformation Center