



March 2, 2017

The Honorable Ben Carson  
Secretary  
U.S. Department of Housing and Urban Development  
451 7th Street S.W.  
Washington, DC 20410

Subject: Deregulation Necessary to Better Serve Families

Dear Mr. Secretary:

The Council of Large Public Housing Authorities (CLPHA), the National Association of Housing and Redevelopment Officials (NAHRO) and the Public Housing Authorities Directors Association (PHADA) would like to congratulate you on your confirmation as Secretary of the U.S. Department of Housing and Urban Development (HUD) by the Senate. On behalf of the memberships of all three industry groups, we look forward to working with you to strengthen communities and to ensure that our nation's housing needs are met. It is essential in the current funding and regulatory environment that housing authorities (HAs), industry groups and the Department work collaboratively toward mutual goals in order to successfully continue our mission of serving low-income families by providing decent, safe, sanitary and affordable housing.

As you are well aware, HAs across the country have endured historically low funding levels and pro-rations for their rental assistance programs; these low funding levels are very likely to continue or worsen as a result of current law. As examples, the Housing Choice Voucher Housing Assistance Payments are being prorated at 95 percent of full renewal funding, the administrative fee for the Housing Choice Voucher program is only at 77 percent of formula eligibility, and Public Housing Operating Subsidy is being prorated at 85 percent of formula eligibility. In addition, agencies have seen significantly increased administrative and regulatory burdens and have become overwhelmed with new and expanded rules and regulations. As a result, the industry has experienced considerable adverse effects to affordable rental housing programs like public housing and the Housing Choice Voucher program. Above all, this has negatively impacted low-income individuals across the nation as HAs have been forced to make administrative cuts to programs, resulting in fewer families served and fewer critical resources provided overall to those in need of housing assistance. Put simply, the ability to carry out our core mission of providing affordable rental housing to the nation's most vulnerable populations is in jeopardy.

Not only have agencies struggled under the weight of decreased funding and increased regulation, but HUD itself has struggled with capacity issues. The Department has seen funding cuts, reduced staffing and increased oversight requirements, as well. Further exacerbating

HUD's incapacity to adequately monitor agencies in this environment is the federal hiring freeze implemented by the President last month. Even before this, the Department was already having difficulty fulfilling its obligations. With this in mind, we believe HUD should focus its limited resources more carefully on core obligations to ensure efficient and effective affordable rental housing programs to better serve low-income individuals.

President Trump pledged that in his first 100 days in office he would eliminate two regulations for every new regulation that is issued. Subsequently, on January 20, the Administration released a memo instituting a regulatory freeze pending further review of regulations that have not been published in the Federal Register, or of those regulations that are not effective as of January 20, with a few exceptions. CLPHA, NAHRO and PHADA are supportive of realistic deregulation efforts and see this as an opportunity for the Department to focus on internal capacity issues, as well as provide HAs with greater flexibility to better serve families.

CLPHA, NAHRO and PHADA have agreed upon a list of HUD initiatives that cause great concern for our colleagues. This list is not exclusive, but includes six topics that the industry groups jointly agree cause major barriers to HAs in their mission to better serve low-income families. We feel strongly that the Department should seriously consider rescinding completely, or significantly revising the proposals detailed below. The rescission or modification of some or all of these overly burdensome requirements is not only in the best interest of the low-income residents that HAs serve, but is also, we believe, in the best interest of HUD. In all circumstances, eliminating these initiatives completely does not invalidate the Department's requirement to provide oversight. It simply restores previous obligations and requirements that are currently sufficient, rather than imposing additional unreasonable burdens.

- **Demolition/Disposition Policy and Regulations:** Current “guidance” issued by the Department in the form of Notice PIH 2012-7 severely limits and in some situations effectively prohibits PHAs from demolishing or disposing of public housing as otherwise authorized by Section 18 of the U.S. Housing Act of 1937. We believe the Notice itself is invalid under federal rulemaking requirements since HUD is using it to establish substantive rules which may only be made through actual regulations. Further, the Notice is clearly inconsistent not only with HUD’s existing regulations at 24 CFR Part 970 but with the statute itself. In 2014, HUD issued a proposed rule which would codify the provisions of the Notice in an effort to conform HUD’s demolition/disposition regulations to the Notice. However, HUD has not followed up on the proposed rule and, more importantly, the proposed rule was also inconsistent with the law.

Fundamentally, the problem with HUD’s Notice, proposed rule, and general policy on demolition/disposition is that they ignore clear congressional intent to leave demolition/disposition decisions to the discretion of PHAs and the local planning process in determining when demolition/disposition is in the best interests of the residents and the community instead of having HUD second-guess those decisions by inappropriately applying an “obsolescence” standard and other federal requirements. In addition, there are other policy decisions embedded in HUD’s demolition/disposition oversight that are not even included in the Notice, much less the regulations or statute. The most egregious is that HUD will only approve some applications if the PHA agrees to build back the same number of public housing units on a one-for-one basis even though that requirement was repealed by Congress in 1998.

We feel very strongly that the Notice, proposed regulations, and other HUD policies depart significantly from the governing statute and Congressional intent for demolition/disposition. Moreover, a Federal District Court has agreed with this general assessment in the case of Housing Authority of Snohomish v. U.S. Department of Housing and Urban Development, No. C13-1791RAJ, 2014 WL 4352192 (W.D. Wash. Sept. 2, 2014). Should HUD not revise its policies, then similar cases will be the only remedy left to PHAs. Finally, not only are HUD's policies inconsistent with law and Congressional intent, they actually interfere with the mutual goal that PHAs and HUD have of improving affordable housing opportunities for low-income families.

- **Asset Management Reversal and Central Office Cost Center (COCC) Proposed Changes** - As a result of a methodologically unsound Office of the Inspector General (OIG) report, the Department plans to reverse and abandon a longstanding policy position related to asset management; a policy position which was the Department's own proposal and initiative from the outset which was imposed on all but the smallest HAs across the nation. This policy reversal would not only create an accounting nightmare for HAs related to the tracking of fees and income, but could prevent local, strategic entrepreneurial efforts if agencies are no longer able to generate funds that could be utilized for innovations that increase housing choice and services to residents. At this time, future changes to asset management and the COCC are currently under consideration by the Department, which has been struggling with ways to revise the system. If the Department were to cease re-federalization efforts, the current system, which has been working effectively for over a decade with the Department's support, would remain in place.
- **Assessment of Fair Housing (AFH) Tool** - Our members fully support affirmatively furthering fair housing, as well as effective and efficient approaches to satisfying this goal. However, HUD's developed AFH tools are methodologically overly burdensome and of limited use to local agencies in addressing fair housing issues. The tool requires agencies nationwide to spend hundreds of thousands of hours annually addressing the barriers facing resident's access to good schools, job opportunities and mass transit, even though housing professionals have virtually no control over these barriers in local communities. While the Department has made some efforts to revise the existing tool to address concerns shared with the Department by industry groups, the tool remains too flawed and exceeds the capacities of both HUD and HA staff time and resources. Further, the groups question the Department's capacity to provide, as promised, the data tables and maps required to adequately complete the AFH tool. The Department should reassess the efficiency of requiring all HAs across the country to complete hundreds of thousands of burden hours - hours which will divert HA staff from assisting their residents. In addition, the Government Accountability Office (GAO) determined that the Department was incapable of implementing the previous Analysis of Impediments (AI) requirements in 2010. We fear that HUD's efforts to replace the existing, simpler AI process with a much more complex and burdensome AFH process places the Department in the unfortunate position of future GAO findings that are critical of HUD's ability to effectively manage and accomplish fair housing goals.
- **Section 3 Proposed Rule** - The Department issued a proposed rule in 2015 updating the regulations related to creating economic opportunities for low-income persons and

residents of affordable rental housing programs. The proposed rule consists of significantly increased oversight and compliance requirements, added complexity to an already arduous program and considerable increased administrative and regulatory burdens. HUD continues to add new and costly regulatory burdens to already underfunded housing agencies, citing the need for increased oversight and monitoring, despite the fact that compliance with Section 3 has actually increased drastically. HUD issued guidance and technical assistance has improved compliance appreciably. As stated in the proposed rule, “HUD has sought to strengthen compliance with Section 3 by concentrating on oversight, outreach and technical assistance...These steps increased recipient reporting from 20 percent to over 80 percent.” However, such broad amendments to Section 3 that increase burdens so significantly, are unnecessary. In the current funding environment, existing Section 3 regulations are adequate to monitor and assess compliance without undermining an HA's ability to perform the core mission of providing affordable housing to vulnerable populations like children, the elderly, disabled and veterans.

- **Proposed Uniform Physical Condition Standards for the Voucher Program (UPCS-V)** - The Department is currently in the early stages of a demonstration program, UPCS-V. UPCS-V is the proposed standard for assessing the physical condition of Housing Choice Voucher (HCV) program units. As is the case with many of the initiatives discussed in this letter, the demonstration and potential implementation of a new physical inspection standard in the HCV program is imprudent and could have serious and far-reaching consequences to the voucher program as a whole. Potential consequences could include, but are not limited to: decreased housing choice for residents, loss of landlords to the HCV program and increased costs to both HAs and residents. For example, significantly expanded inspectable items under UPCS-V will increase the likelihood that a larger number of available, affordable rental units in the current market will become unavailable to voucher participants, either as a result of a higher percentage of failed units, or a lack of desire for landlords to continue to participate in the program as a result of the increased inspection requirements. This could directly result in a decrease in housing choice and/or voucher success rates. CLPHA, NAHRO and PHADA continue to support improvements to the current Housing Quality Standards (HQS) to ensure decent safe and sanitary affordable housing, but consider a complete modification of the standard and transition to UPCS-V to be unfeasible.
- **Smoke-Free Public Housing Final Rule** - HUD issued a final rule requiring all public housing properties to be smoke free within 18-months of its effective date, February 3, 2017. CLPHA, NAHRO and PHADA are concerned with the potential for unintended consequences and increased costs, particularly to vulnerable populations like the elderly, disabled and veterans. Further, we object to the selective imposition of this rule to only the public housing program and question why it does not require the same smoking prohibitions in other affordable rental housing programs. Over 600 agencies have voluntarily moved to smoke-free public housing policies which have been largely successful due to local, community-based strategies in cooperation with low-income residents. Federal one-size-fits-all mandates are unrealistic and often result in adverse impacts on vulnerable populations.

Additionally, the groups would like to express concerns related to two recent solicitations of comment concerning the Moving to Work (MTW) program. These notices represent significant departures from the Department's past approach to MTW agreements. These notices, if not considerably modified, have the potential to fundamentally alter the original design of the MTW program.

- **MTW Operations Notice** – HUD issued an operations notice and solicitation of comment on January 23, 2017 for the expansion of the MTW program. CLPHA, NAHRO and PHADA are carefully reviewing the Operations Notice and the HUD-requested “specific areas for comment.” While we are currently reviewing the Notice, we want to register our joint concern that the Notice severely circumscribes the MTW program. We are most disappointed that the expansion does not resemble the existing program in the degree of local flexibility and innovation that are hallmarks of the MTW program. We will provide more thorough comments after our review.
- **MTW "Substantially the Same" Notice** – On December 20, 2016, HUD issued a notice imposing new requirements on MTW agencies regarding the statutory provision that they serve “Substantially the Same” (STS) total number of families as they would have served had they not combined funds using MTW authority. Under the notice, HUD proposes to revise the current methodology for calculating how the STS requirement is met. CLPHA, NAHRO, and PHADA support the comment letter submitted by the “designated Steering Committee” of the 39 current MTW agencies. We agree that the revised formula is contrary to the intent of the MTW program. Congress assigned PHAs, not HUD, the task of developing local plans to serve families that meet program criteria, and as such the notice limits the ability of housing authorities to be innovative and creative in their communities.

CLPHA, NAHRO and PHADA welcome an opportunity to discuss any, or all of our concerns discussed above in more detail. Our organizations and our members look forward to working with you in the future.

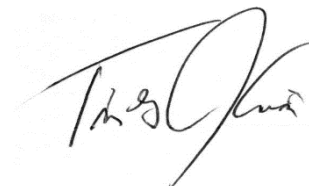
Sincerely,



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cc: Scott Keller  
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