



National Association of Housing and Redevelopment Officials

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**Testimony by
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**U.S. House of Representatives
Committee on Financial Services
Subcommittee on Housing and Insurance**

**Hearing on HUD's Role in Rental Assistance: An Oversight and Review of Legislative
Proposals on Rent Reform**

April 25, 2018

Good afternoon, Chairman Duffy, Ranking Member Cleaver and Members of the U.S. House Committee on Financial Services: Housing and Insurance Subcommittee. My name is Adrienne Todman, and I am the CEO of the National Association of Housing and Redevelopment Officials (NAHRO). Thank you for inviting me to testify today on the important topic of rent reform.

This year, NAHRO celebrates its 85th anniversary as a membership organization for the affordable housing and community development industry. In 1933, the founders of NAHRO created the association to address their common concern for the nation's housing needs and were determined to develop programs to address those needs; and that remains our charge today. Our 20,000 members provide homes for more than 7.6 million people across the country in urban, rural, and suburban America.

Rent reform is a concept that has been discussed and debated for decades. The current approach to rent was established in the 1960s. As a response to rent increases in public housing, Senator Edward Brooke passed an amendment which capped public housing rent at 25 percent of a resident's income. In the early 1980s, Congress raised the rental cap to 30 percent. Additionally, Congress provided the option for PHAs to provide their public housing residents with the choice of paying an income-based rent or a flat rent. While income-based rents are a well-intentioned measure, an unintended side effect - especially in times of uncertain and limited federal funding - is that this rent structure deprives housing authorities of the financial support needed to operate and maintain their buildings. This is why operating subsidy is so important to housing agencies.

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While various important rent initiatives were authorized in the Housing Opportunity Through Modernization Act of 2016 (HOTMA), these were not all encompassing, nor did they provide any alternative rent determination structures for PHAs. Rent provisions addressed within HOTMA include:

- The requirement that HUD continue to provide hardship exemptions for housing program participants impacted by minimum rents;
- The elimination of the Earned Income Disregard, which prevented rent increases for tenants who had gained additional income through work;
- The ability to allow agencies to rely on determinations of income conducted for other federal means-tested public-assistance programs; and
- Increases in the standard deduction for households with persons with disabilities or households with the elderly.

While PHAs appreciate Congress's efforts in streamlining the current rent recertification process through HOTMA, most PHAs are still extremely limited in how they are allowed to charge their tenants rent. This significantly limits PHAs' ability to determine rent structures that work best for their communities and the residents they serve.

This week, at our Washington Conference, we asked our members about their thoughts on rent reform.

The Director of the Belding (Mich.) Housing Commission said that “[a]ll agencies, but especially small agencies, need the flexibility and local control to meet the needs of their low-income families and the unique needs of their local community.”

A senior housing official of a Texas housing authority focused on consistency and complexity. He said, “Real rent reform needs to address the two biggest issues with the current system - lack of transparency and consistency, and errors caused by regulatory complexity. A sensible proposal would simplify the calculation while ensuring that the subsidy is adequate for the local market.”

Currently, the only agencies allowed to shape and implement rent reform initiatives are Moving to Work agencies.

The Moving to Work demonstration gives PHAs the flexibility to serve their varied communities by implementing locally designed solutions in an environment free from the red tape and bureaucratic barriers that face most agencies within HUD's regulatory framework. By allowing housers to focus on housing, the program has created several innovative models that HUD has attempted to replicate nationally. Since its implementation in 1996, additional agencies have been added, bringing the current total of Moving to Work agencies to 39. In 2016, Congress authorized an expansion of Moving to Work by an additional 100 agencies.

While some Moving to Work Demonstration PHAs have implemented rent reform, it is important to note that they have done so “gradually and cautiously.”¹ This includes many years of policy development, consensus building, and community and resident buy-in. As these rent reform proposals must be included within the Moving to Work Plan, they must undergo a public comment process allowing community and resident involvement. This acts as a safeguard in ensuring the rent reform policy is appropriate for the community.

It is also critical to note that any rent reform policy be voluntary, so that PHAs and their communities can decide what best works for their residents.

The subcommittee has charged the panel today with answering four questions regarding rent reform.

What safeguards should the Subcommittee consider to ensure that families affected by the legislative proposal will be protected from discrimination or unintentional adverse impacts with the goal of achieving self-sufficiency or greater access to employment or career opportunities?

Moving to Work agencies provide examples for how hardship exemptions can be incorporated into rent reforms and other eligibility requirements. They acknowledge these hardship provisions are critical in ensuring the protection and success of their residents, especially when circumstances arise that are beyond the resident’s control.

According to the *Innovations in the Moving to Work Demonstration* report, one Moving to Work agency, which has a seven-year time limit for all participants, allows for an extension of assistance beyond those seven years due to extenuating circumstances (e.g., medical issues, job availability, under-employment, or histories of participation in other programs). Another Moving to Work agency that has implemented six-year time limits among non-elderly, non-disabled residents has a provision allowing for continued assistance if the residents in question are able to show continued progress toward their goals.

In order to help residents achieve self-sufficiency and give them greater access to employment or career opportunities, many Moving to Work agencies to provide case management services to their residents to ensure their success. Some Moving to Work agencies require program participants to meet with life coaches at least annually to connect residents to resources and track progress on their plan. One Moving to Work agency set up an Achievement Academy, which allows them to refer their clients to case workers who make referrals to group and one-on-one employment training and coaching, financial counseling, benefits screening, and tax preparation. Another Moving to Work agency has a voluntary program where case managers and residents can meet one-on-one and residents can be referred to community services provided by partners. The common theme between all of these Moving to Work agencies is case management.

¹ *Innovations in the Moving to Work Demonstration*, Khadduri et. al., Abt Associates, 2014, p. 45.

Does HUD’s current rental housing construct for its main rental assistance programs contribute to an over-reliance on government assistance, making it difficult for low-income families to change their economic circumstances for the better?

According to HUD’s Picture of Subsidized Housing dataset, the vast majority of Public Housing Program participants and Housing Choice Voucher recipients are either already working or are households headed by disabled or elderly individuals. Thirty percent of public housing households, 31 percent of Housing Choice Voucher recipients, and 19 percent of Project-Based Voucher recipients had wages as a major source of income. Sixty-three percent of public housing households, 61 percent of Housing Choice Voucher households, and 81 percent of Project-Based Voucher households were headed by an individual with a disability age 61 or younger, or were headed by an individual age 62 or older. Just four percent of Public Housing Program participants and four percent of Housing Choice Voucher recipients include some form of welfare assistance as a major source of income, while only three percent of Project Based Voucher recipients do.

What steps can policymakers take to ease regulatory burdens on housing providers, residents, and property owners when implementing rental housing assistance?

As in many policy areas, increased regulatory burdens have had an adverse impact on the ability of affordable housing providers to maximize their dollars spent to provide safe and decent affordable housing to households. In these times of maximizing limited resources, a streamlined regulatory environment is necessary to ensure as much money as possible is being spent toward housing families, as opposed to complying with regulations with dubious benefits.

Although regulatory streamlining will help, no amount of regulatory streamlining will make up for the extremely deep cuts to programs that help support our nation’s most vulnerable people and help to develop and revitalize communities. While NAHRO is committed to regulatory reform, NAHRO notes that this reform does not replace the need for adequate funding for these essential programs.

Some key regulatory reforms include:

Reduced Reliance on Guidance - NAHRO laments HUD’s excessive reliance on guidance documents. Many of these documents have the same effect as regulation and are given deference by local courts, but have not gone through the informal rulemaking process. The informal rulemaking process guarantees that all HUD stakeholders have the opportunity to comment on the rules that affect them and the families they serve.

Annual and Interim Income Recertifications - Annual and Interim Income recertifications, while necessary under the current rent structure, are time consuming. *The Housing Choice Voucher Administrative Fee Study* found that ongoing occupancy activities are a category of activities that take the greatest amount of time. According to the study, on average, housing agency staff spend half their time performing this task. While the study only looked at the Housing Choice Voucher Program, NAHRO and its

membership believe that these interim income recertifications are similarly time consuming for the Public Housing Program.

Income Targeting - Although the intention of income targeting is admirable, many housing agencies find it to be a burdensome process that results in wasted time for both housing agency administration and the applicants themselves. Often applicants do not list all sources of income and assets accurately on their applications. As such, when a housing authority pulls an applicant from the waiting list, PHA staff spend upwards of two hours per applicant for intake and eligibility, ensuring all necessary income and assets are correctly listed. PHAs routinely have to place applicants back on the waiting list if those applicants ultimately do not meet the income targeting requirement, which is often determined during the intake process. This requires PHA staff to spend time explaining the purpose of income targeting to the applicant, and can even result in an applicant quitting their place of employment in order to become eligible. Ultimately, this defeats the purpose of income targeting. According to our members, applicants have complained of expending valuable time and resources obtaining copies of requested documentation needed for the eligibility process. Housing agencies should be able to pull applicants from their waiting list in a way that best addresses local housing concerns.

Please find a longer list of our recommendations attached to my testimony. (See attached NAHRO Regulatory Reform Letter, June 14, 2017.)

Do housing providers have the flexibility and choice to structure rent calculations and programs that work best with their local priorities and families they serve?

Although most housing agencies are limited in their ability to structure rent calculations, one existing 22-year old demonstration program has provided a handful of housing agencies with the ability to create policies and programs that work best with the communities and families they serve. As noted earlier in this testimony, Moving to Work agencies are allowed to obtain exemptions from many regulatory and statutory provisions that apply to the Public Housing and Housing Choice Voucher Programs with HUD approval. This allows these agencies to craft and structure policies with input from their local communities to best address local priorities and the families they serve.

A report by the Public and Affordable Housing Research Corporation (PAHRC) and Abt Associates found that Moving to Work agencies “tend to outperform their peers on outcomes related to the goals of the Moving to Work program such as self-sufficiency and housing choice.”²

NAHRO was extremely pleased that the 2016 Consolidated Appropriations Act authorized HUD to expand the Moving to Work demonstration program by an additional 100 high-performing housing agencies over a period of seven years. This is a step in the right direction. NAHRO has

² Testing Performance Measures for the Moving to Work Program, Buron et. al., PAHRC, Abt Associates, 2017, pgs. 6 - 7.

long called for meaningful expansion of the Moving to Work demonstration and is deeply supportive of Congress's efforts to move the expansion forward.

Many of the proposed rent determination methods included within this legislation were tested and proved effective at Moving to Work agencies across the country. Although rent reform would provide housing agencies with additional flexibility and choice to structure rent determinations that work best with their local priorities and the families they serve, allowing all housing agencies interested in joining the Moving to Work Demonstration would be even more impactful, given their ability to use resources to help families become successful.

Thank you, Chairman Duffy for inviting me to testify today. I am happy to answer any questions you may have.



National Association of Housing and Redevelopment Officials

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June 14, 2017

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

Re: [Docket No. FR-6030-N-01] Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda Under Executive Order 13777¹

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), we would like to offer the following comments to the United States Department of Housing and Urban Development (HUD or the Department) in response to the notice of information collection (FR-6030-N-01) titled “Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda Under Executive Order 13777” published in the *Federal Register* on May 15, 2017.

Formed in 1933, NAHRO represents over 23,000 housing and community development individuals and agencies. Collectively, our members manage over 970,000 public housing units, 1.7 million Housing Choice Vouchers, and receive over \$1.5 billion in Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funding to use in their communities. NAHRO is unique in our ability to represent Public Housing Agencies, Local Redevelopment Agencies, and other HUD grantees of all sizes and geography.

NAHRO would like to begin by noting that we are disappointed in the Administration’s fiscal year (FY) 2018 HUD budget proposal. No amount of regulatory streamlining will make up for the extremely deep cuts to programs that help support our nation’s most vulnerable people and help to develop and revitalize communities. While NAHRO is committed to working with the Department on regulatory reform, NAHRO notes that this reform does not replace the need for adequate funding for these essential programs.

Like in many policy areas, increased regulatory burdens have had an adverse impact on the ability of affordable housing providers to maximize their dollars spent to provide safe and decent affordable housing to households. Previous research “investigating the relationship between federal regulation and macroeconomic performance” has found that regulations cause reductions in the growth rate of output and total factor productivity.² In these times of maximizing limited resources, a streamlined regulatory environment is necessary to ensure as much money as possible is being spent toward housing families, as opposed to complying with regulations with dubious benefits.

¹ All citations are informal.

² Dawson, J. and Seater, J. (2013, January), Federal Regulation and Aggregate Economic Growth. (<http://www4.ncsu.edu/~jjseater/regulationandgrowth.pdf>.)

Stephen W. Merritt, PHM, President; **Carl S. Richie, Jr.**, NCC, NAHRO Fellow, Senior Vice President; **Julie Brewen**, Vice President-International Research and Global Exchange; **Donna Brown-Rego**, Vice President-Member Services; **Donovan Duncan**, Vice President-Community Revitalization and Development; **Duane Hopkins**, Vice President-Professional Development; **Richard Leco**, PHM, Vice President-Commissioners; **Regina Mitchell**, SPHM, PHM, Vice President-Housing; **Adrienne Todman**, Chief Executive Officer.

NAHRO has identified many regulations that would make good candidates for streamlining. Potential reasons to streamline these regulations include the following:

- (a) The regulation results “in the elimination of jobs, or inhibits job creation”;
- (b) The regulation is “outdated, unnecessary, or ineffective”;
- (c) The regulation imposes “costs that exceed benefits”; or
- (d) The regulation creates a “serious inconsistency or otherwise interferes with regulatory reform initiatives and policies.”³

We have done our best to be thoughtful in our commentary so that HUD can be certain that our regulations have been picked with one of the rationales listed above. Additionally, to the extent that there are any recommended changes that will require statutory changes, NAHRO recommends including them as policy provisions in future HUD budgets or working with Congress to streamline HUD programs legislatively.

We would also like to emphasize that this list is non-exhaustive. We view this as the start of a conversation between the Department and NAHRO. Given the limited time to compile this list, NAHRO expects to identify additional avenues for further regulatory streamlining, which we will share with the Department.

This comment letter is organized into three sections: Public Housing and Section 8 recommendations; Community Planning and Development; and recommendations on cross-cutting programs and initiatives. Within each major section are topic headers with NAHRO’s recommendation on each topic.

NAHRO thanks the Department for its willingness to work on this critical issue. We look forward to working together to make sure that every dollar allocated by the federal government is used efficiently towards housing and not towards compliance with certain unwarranted regulations.

³ 82 Fed. Reg. 22,346.

Public Housing Program and Housing Choice Voucher Program Recommendations

Capital Fund, Section 30

Reason(s) for regulatory streamlining: (a), (b) and (d).

The Quality Housing and Work Responsibility Act of 1998 (QHWRA) added Section 30 to the U.S. Housing Act of 1937, authorizing PHAs “to mortgage or otherwise grant a security interest in any public housing project or other property of the public housing agency.” More than ten years later, in 2011, HUD published a notice governing the Public Housing Mortgage Program (PHMP) through Section 30.⁴ At the time, NAHRO urged HUD to make major changes within the proposed notice which would significantly increase the accessibility and utility of the program. The difficulty in utilizing the PHMP and the unpredictable nature of public housing capital and operating funds have effectively limited the ability of PHAs to utilize the PHMP. A significant percentage of the nation’s public housing stock is currently in a precarious financial and physical situation. The ability to leverage the asset value under Section 30 to address these concerns is important and would create an additional and badly needed mechanism to address the current backlog of capital needs, helping preserve public housing for future generations.

Currently, HUD prohibits the subordination of the so-called “federal interest” in public housing dwelling units. Placing the declaration of trust in first lien position however destroys the value of the public housing real estate as collateral and severely reduces the potential utility of the PHMP. We believe that in any transaction in which public housing is a substantial portion of the collateral, lender interest in participating in this program will be very limited. HUD should unlock the value of public housing properties by subordinating the declaration of trust for PHAs that opt to use the PHMP thus allowing them to raise the capital necessary for renovations.

Demolition and Disposition, Section 18

Reason(s) for regulatory streamlining: (a), (b) and (c).

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 but with the statute itself.⁵ 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.⁶ 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

⁴ See Notice PIH 2011-30.

⁵ See 24 CFR Part 970.

⁶ *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).

with the mutual goal that PHAs and HUD have of improving affordable housing opportunities for low-income families.

Interim Income Recertifications

Reason(s) for regulatory streamlining: (c).

Income recertifications, while necessary, are time consuming. *The Housing Choice Voucher Administrative Fee Study* found that ongoing occupancy activities are a category of activities that take the greatest amount of time.⁷ According to the study, on average, PHA staff spent half their time on this category of activity.⁸ Within this category, annual and interim recertifications took up three quarters of the time used for ongoing occupancy activities. Of the 409 minutes of time per voucher per year that were spent on ongoing occupancy activities, interim recertifications took 87 minutes.⁹ While the study only looked at the Housing Choice Voucher Program, after consulting with our membership, NAHRO believes that these interim income recertifications are similarly time consuming for the Public Housing program as well.

NAHRO believes that HUD should investigate avenues to reduce the time taken to complete interim recertifications in both the Housing Choice Voucher and Public Housing Programs. NAHRO supports having exemptions for hardships that are through no fault of the families (e.g., death of an income earner, disability of an income worker, layoff from work at no fault to the family, etc.).

Annual Income Recertifications

Reason(s) for regulatory streamlining: (c).

Income recertifications, while necessary, are done in an inefficient way. *The Housing Choice Voucher Administrative Fee Study* found that ongoing occupancy activities are the category of activities that take the greatest amount of time.¹⁰ According to the study, on average, PHAs staff spent half their time on this category of activity.¹¹ Within this category, annual and interim recertifications took up three quarters of the time used for ongoing occupancy activities. Of the 409 minutes of time per voucher per year that were spent on ongoing occupancy activities, annual recertifications took 225 minutes.¹² While the study only looked at the Housing Choice Voucher Program, after consulting with our membership, NAHRO believes that these annual income recertifications are similarly time consuming for the Public Housing program as well.

NAHRO believes that one way to effectively reduce this regulatory burden in half is to make income recertifications, which are currently done annually, to be performed biennially. This will spread the work over a time horizon of two years instead of one year, and will allow a significant reduction in the administrative burden on PHAs.

Moving to Work Demonstration (MTW)

Reason(s) for regulatory streamlining: (a), (c) and (d).

NAHRO was extremely pleased that the 2016 Consolidated Appropriations Act (the 2016 Act) authorized HUD to expand the MTW Demonstration program by an additional 100 high performing PHAs over a period of seven years. NAHRO has long called for meaningful expansion of the MTW Demonstration and is deeply supportive of Congress's efforts to move the MTW Demonstration expansion (the MTW expansion or the expansion) forward. PHAs that participate in the MTW Demonstration enjoy broad funding flexibility and may experiment with alternative program structures to better serve their communities.

⁷ Abt Associates (2015, August), *Housing Choice Voucher Administrative Fee Study*, p. 67. (https://www.huduser.gov/portal/publications/pdf/AdminFeeStudy_2015.pdf.)

⁸ *Housing Choice Voucher Administrative Fee Study*, p. 66.

⁹ *Housing Choice Voucher Administrative Fee Study*, p. 72.

¹⁰ *Housing Choice Voucher Administrative Fee Study*, p. 67.

¹¹ *Housing Choice Voucher Administrative Fee Study*, p. 66.

¹² *Housing Choice Voucher Administrative Fee Study*, p. 72.

The Operations Notice for the Expansion of the Moving to Work (MTW) Demonstration Program Solicitation of Comment (Operations Notice or MTW Expansion Operations Notice) establishes the requirements for the implementation and continued operations of the MTW Demonstration program pursuant to the MTW expansion statute. Although NAHRO acknowledges HUD's requirement to evaluate specific policy interventions, this Operations Notice is entirely too restrictive for PHAs to reap the benefits of the flexibilities inherent in the current MTW Demonstration. The draft Operations Notice contains far too many conditional waivers without providing any transparency in the approval process. Furthermore, there are significantly fewer waivers available in the Operations Notice than waivers available for current MTW agencies. As the background section in the Operations Notice states, "MTW agencies use the opportunities presented by MTW to better address local housing needs." HUD's top-down approach alongside the restrictions, limitations, and conditions contained in this draft Operations Notice will make it extremely difficult for PHAs to make decisions at the local level to address local housing needs and meet the statutory objectives of the MTW Demonstration.¹³

Furthermore, many of the regulatory program waivers provided to existing MTW agencies have shown the benefits and successes of regulatory streamlining. These proven regulatory waivers should be applied by HUD to all PHAs in order to maximize efficiency and local control of the programs. HUD should further request that Congress provide statutory changes based on proven MTW successes that would allow flexibility of funding and program operation.

Voluntary Small Area Fair Market Rents (FMRs)

Reason(s) for regulatory streamlining: (b) and (c).

The Department should make the use of Small Area FMRs voluntary in all areas throughout the country.

NAHRO strongly believes that the mandatory imposition of Small Area FMRs has the potential to financially burden many future program participants as certain zip codes will see their FMRs decline. While NAHRO appreciates HUD's commitment to "monitoring the progress of use of Small Area FMRs in addressing high levels of voucher concentration" to test "the core hypothesis . . . that this will significantly expand the ability of [Housing Choice Voucher] holders to access housing in neighborhoods with high-quality schools, low crime rates, and other indicators of opportunity," NAHRO does not believe that a policy that has the potential to have such a large deleterious effect on the lives of hundreds of thousands of people should be implemented as an experiment.¹⁴ Given the large number of people that the imposition of Small Area FMRs would effect, it is too early to implement this policy without further empirical evidence of its effects.

Furthermore, NAHRO does not believe that the Small Area FMRs represent accurate on-the-ground rental market prices. The accuracy of Small Area FMRs is a function of the underlying data set and the methodology used to convert the data set to the FMRs. The source of the data remains outdated. Despite improvements to the methodology, including adopting a "forward trending" methodology, this change was not drastic enough to create fully accurate FMRs, and therefore Small Area FMRs still lag behind rental markets.

Additionally, NAHRO has concerns about how the mandatory imposition of Small Area FMRs on certain metropolitan areas will increase the administrative burden of PHAs in those regions. Increased administrative burden is functionally similar to a decrease in funding, meaning that PHAs will be less able to efficiently serve program participants and will have a smaller positive impact on their communities.

¹³ See NAHRO's previous letters on the MTW Expansion Operations Notice.

(http://www.nahro.org/sites/default/files/searchable/NAHRO_MTW%20Expansion%20Operations%20Notice%20Solicitation%20of%20Comments.pdf)

(http://www.nahro.org/sites/default/files/searchable/NAHRO_Comments_MTW%20Expansion%20Operations%20Notice_June%202017_2.pdf)

¹⁴ 81 Fed. Reg. 39,226.

To avoid these adverse consequences, and to facilitate making the rule voluntary as quickly as possible, NAHRO recommends a two-step process. First, HUD should publish a notice in the *Federal Register* that makes a determination to suspend mandatory implementation of Small Area FMRs in currently mandatory areas.¹⁵ Second, HUD should re-open rulemaking for the Small Area FMR rule so that its text can be amended to make it voluntary.¹⁶

Income Targeting

Reason(s) for regulatory streamlining: (b) and (c).

Although the intention of income targeting is admirable, many PHAs find it to be a burdensome process that results in wasted time for both PHA administration and the applicants themselves.¹⁷ Often applicants do not list all sources of income and assets accurately on their applications. As such, when a housing authority pulls an applicant from the waiting list, PHA staff spend upwards of two hours per applicant for intake and eligibility, ensuring all necessary income and assets are correctly listed. PHAs routinely have to place applicants back on the waiting list if those applicants ultimately do not meet the income targeting requirement, which is often determined during the intake process. This requires PHA staff to spend time explaining the purpose of income targeting to the applicant, and can even result in an applicant quitting their place of employment in order to become eligible, ultimately defeating the purpose of income targeting to being with. According to our members, applicants have complained of wasting their time and resources obtaining copies of requested documentation needed for the eligibility process. PHAs should be able to pull applicants from their waiting list in a way that makes sense at the local level to best address local housing concerns.

Uniform Physical Condition Standards - Voucher (UPCS-V)

Reason(s) for regulatory streamlining: (c) and (d).

The Department is currently in the early stages of a Demonstration program for testing the Uniform Physical Condition Standards - Voucher (UPCS-V), the unit inspection protocol that the Department hopes will supersede the current Housing Quality Standards (HQS) for the Housing Choice Voucher Program. As mentioned in a joint letter signed on by industry groups, 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 the following: decreased housing choice for residents, loss of landlords to the HCV program and increased costs to both PHAs and residents. For example, significantly expanded inspectable items under UPCS-V will increase the likelihood that a large 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.

If HUD insists on completing the new protocol, then NAHRO suggests that HUD keep track of the average time of inspections using the new protocol and make sure that the new protocol's average time is less than the average time of inspections under the current HQS protocol. Making sure that inspections are easily and quickly completed should be one of the primary goals of the UPCS-V Demonstration. HUD should reject any protocol that results in a more burdensome inspections process or a process that takes longer to complete than the current HQS process.

¹⁵ See 24 C.F.R. § 888.113(c)(4)(iii).

¹⁶ See NAHRO's previous letter on making Small Area FMRs voluntary.

(<http://www.nahro.org/sites/default/files/searchable/NAHRO-Letter-SAFMR-Voluntary-Final.pdf>.)

¹⁷ See 24 CFR §§ 982.201 and 24 CFR 960.202.

Public Housing Assessment System (PHAS)

Reason(s) for regulatory streamlining: (b) and (d).

The Public Housing Assessment System (PHAS) is one of the primary means by which HUD measures the performance of PHAs.¹⁸ Although NAHRO believes in adequate oversight of the Public Housing program, PHA scores have suffered as a result of the dramatic funding cuts to both the Public Housing Operating Fund and Capital Fund. These cuts have made it increasingly impossible for PHAs to receive high performer status through no fault of their own. As such, NAHRO recommends suspending non-statutory PHAS compliance until funding meets actual need and makes scores advisory only.

Beyond funding concerns faced by PHAs, NAHRO has also expressed a broad range of concerns about the Interim PHAS rule, especially in regard to the structure of the Capital Fund indicator.¹⁹ A total of 10 points are available for this indicator, which is scored at the PHA portfolio level. Five points are allocated to timely obligation of funds, with PHAs that obligate at least 90 percent of their funds within 24 months receiving full points. Agencies failing to reach this threshold receive no points. The remaining five points are assigned to a sub-indicator that measures the overall occupancy rate. Agencies with occupancy at or above 96 percent receive the full five points, those with occupancy between 93 and 96 percent receive two points, and those below 93 percent receive no points.

NAHRO remains troubled by the threshold structure of the Capital Fund indicator, which creates an artificial tie between the timely obligation and occupancy sub-indicators. To bar a PHA from receiving points for one sub-indicator based on a failure to perform adequately on the other is inherently illogical and unfair. PHAs should not be able to lose more points than they can gain under any sub-indicator. Such a structure creates a double jeopardy situation and muddles the picture of performance which the assessment is intended to create.

Furthermore, NAHRO continues to be concerned about the flawed construction of the Capital Fund occupancy indicator. By penalizing PHAs for vacancies considered “allowable” under the Operating Fund regulations, the PHAS rule creates an inherent policy contradiction which PHAs must navigate. Furthermore, by using a point-in-time snapshot approach to data gathering rather than truly measuring what happened during the course of the year, HUD is relying on an imprecise measurement. HUD has reinstated points allocated to the occupancy sub-indicator of the Capital Fund for all PHAs that received points for the timeliness of obligation sub-indicator in past years. Instead of continuing to retroactively reinstate Capital Fund Indicator points for the occupancy sub-indicator, we urge HUD to remove the sub-indicator entirely.

Additionally, in any reform of PHAS, HUD should make sure that the basis for all requirements is based on data that HUD already collects. It should not add any new collection requirements or surveys for PHAs.

Central Office Cost Center (COCC)

Reason(s) for regulatory streamlining: (a), (b) and (c).

Asset Management Fees: HUD limits the fees PHAs are permitted to charge to each asset management property. These limitations were set by HUD, contrary to the outcome of the negotiated rulemaking process, as one-size-fits-all dollar amounts, rather than locally determined “reasonable” levels.²⁰ HUD should remove these fixed dollar caps and allow PHAs to set their fees based on reasonable factors related to their individual operating environments.

Re-federalizing COCC dollars: A 2014 report from HUD’s Office of Inspector General (OIG) recommended that HUD “re-federalize” fee revenues that PHAs’ COCCs have earned since they began implementing asset management. HUD and industry groups responded by noting the government-wide effort, under the direction of the Office of Management and Budget (OMB), to use fee-for-service models whenever appropriate to incentivize efficient program management and operations. The program office noted that no federal restrictions are placed on how recipients may use management fees earned as a result of participation in HUD’s multifamily programs or on

¹⁸ See Notice PIH 2011-13.

¹⁹ See 24 CFR Parts 901, 902, and 907.

²⁰ See 71 Fed. Reg. 52,710.

development fees earned from tax credit properties.

Regardless, on April 1, 2016, HUD issued a letter informing PHAs that they had come to an agreement with the OIG, and that HUD will begin a rulemaking process to re-federalize fees paid into the COCC. Re-federalizing fees earned by PHAs through asset management may penalize PHAs that have spent significant resources switching to asset management and have managed their finances appropriately and in line with the law and HUD guidance. PHAs would be treated differently than other contractors of the federal government, reflecting a fundamental misunderstanding of the relationship between HUD and PHAs. Re-federalizing fees will significantly impact PHAs' ability to use fee-based revenues to pursue affordable housing developments outside of public housing and Section 8 programs, greatly decreasing their ability to meet the needs of their communities, especially in this time of limited funding. This could increase the possibility of the recapture of these funds, resulting in negative repercussions for long-term PHA financial planning.

Small Public Housing Agency Opportunity Act of 2016 Provisions

Reason(s) for regulatory streamlining: (b), (c) and (d).

NAHRO encourages HUD to examine the Small Public Housing Agency Opportunity Act of 2016 (known as "SPHAOA" or "SHARP" from a previous iteration of the bill) which was introduced in the 114th Congress.²¹ SPHAOA would significantly ease administrative burdens and increase program flexibility available to smaller PHAs operating the Public Housing program, the Housing Choice Voucher program, or both. NAHRO also recommends examining the legislative language to see which provisions can be implemented via regulation, and incorporating those provisions that require statutory changes as policy provisions in future proposed budgets.

Provisions from the proposed legislation would benefit residents; local housing authorities; HUD (by having to provide less time-consuming extraneous regulatory oversight); and the federal government generally.

Instituting Smoke-Free Public Housing

Reason(s) for regulatory streamlining: (c).

NAHRO and its members understand the benefits of smoke-free public housing. Although NAHRO encourages its members to consider implementing smoke-free policies for federally assisted housing units, the decision to do so is best left to the discretion of individual PHAs. For this reason, NAHRO recommends suspending the "Instituting Smoke-Free Public Housing" Final Rule.²² Local flexibility in drafting smoke-free policies is critical for successful implementation. Many of our members have already implemented smoke-free policies of their own volition through mechanisms that make sense for the communities they serve. NAHRO is concerned that a one-size-fits-all approach would encroach upon these established policies that have proven effective, and would remove the flexibility inherent in the crafting of these policies that made them effective in the first place. The final rule would also remove local flexibility for PHAs drafting new smoke-free policies, making them less effective and more difficult to enforce. PHAs are best equipped to institute practical policies to protect resident health based on previous guidance from HUD and local knowledge. NAHRO is concerned that the final rule does not provide PHAs enough flexibility to effectively accomplish this, creating significant enforcement and logistical concerns for PHAs. NAHRO is also concerned that this unfunded rule will increase administrative burdens for PHAs during a period of historically low funding for the public housing program. This creates significant impediments to implementing and enforcing new, unfunded regulations.²³

²¹ The bill, introduced in the 114th Congress, is [H.R. 4816](https://www.congress.gov/bill/114th-congress/house-bill/4816/text?q=%7B%22search%22%3A%5B%22H.R.+4816%22%5D%7D&r=1.). (<https://www.congress.gov/bill/114th-congress/house-bill/4816/text?q=%7B%22search%22%3A%5B%22H.R.+4816%22%5D%7D&r=1.>)

²² See 24 CFR Parts 965 and 966.

²³ See NAHRO's previous letter on the "Instituting Smoke-Free Public Housing" Final Rule. (http://www.nahro.org/sites/default/files/searchable/NAHRO%20Comments%20Instituting%20Smoke-Free%20Public%20Housing%20Proposed%20Rule_FINAL.pdf).

Inventory Management System / PIH Information Center (IMS/PIC)

Reason(s) for regulatory streamlining: (c).

Due to the extreme burden caused by technical issues and “fatal errors” that occur in PIC, NAHRO requests that HUD finalize and release PIH Information Center – Next Generation (PIC-NG) as quickly as possible.

Environmental Reviews

Reason(s) for regulatory streamlining: (a) and (c).

On December 5, 2016, HUD released Notice PIH 2016-22 (HA) titled “Environmental Review Requirements for Public Housing Agencies.” The requirement to secure environmental clearance prior to initiating activities for federally-assisted housing directly supports HUD’s goal to provide decent, safe, and sanitary affordable housing. However, Moving to Work (MTW) agencies do not have the flexibility to environmental review requirements and must receive environmental clearance prior to any acquisition or physical activities including locally funded activities if the site will receive HUD funding at any point in the future and prior to obligating MTW Block Grant funding. NAHRO believes the MTW agencies should have the flexibility to the review requirements.

Also, within the Notice the term “maintenance” is defined differently for environmental clearance than for PIH’s Capital Fund and Operating Fund programs. For environmental review purposes, maintenance activities slow or halt deterioration of a building and do not materially add to its value or adapt it to new uses. Minor repairs and replacements are considered operating expenses in accordance with section 9(g) of the United States Housing Act of 1937. NAHRO strongly encourages HUD to quickly promulgate the flexibility of capital funds and operating funds to expedite the necessary maintenance.

Furthermore, in order to streamline the reporting process, PHAs should be exempt from environmental reviews for minor repairs and replacements, if the total development cost is under \$150,000. This number should be indexed to the small purchase threshold value located at 2 CFR Part 200. This small purchase threshold value is indexed to inflation.

Community Service and Self-Sufficiency Requirement

Reason(s) for regulatory streamlining: (b) and (c).

Although a statutory requirement, NAHRO suggests that HUD examine the community service and self-sufficiency requirements to find ways that it can be made less onerous for PHAs to implement.²⁴ The community service and economic self-sufficiency requirements state that adult program participants that do not have an exemption are required to complete eight hours of community service or participate in eight hours of a self-sufficiency program. Certain individuals, including those who are employed or persons with disabilities, are exempt from these requirements.

There are two things that HUD can do to ease the regulatory burden for this provision. First, HUD can suggest statutory changes in its next proposed budget to make compliance with these requirements optional for PHAs. Second, as the regulations are currently written, residents may not work at their PHAs doing work that is ordinarily performed by a PHA employee. PHAs should have the option to allow residents to volunteer in any capacity in the PHA to fulfill their community service and self-sufficiency requirements.²⁵ This would allow for easier compliance with the requirements and would provide additional opportunities for tenants.

²⁴ See 42 U.S.C. § 1437j(c).

²⁵ See 24 C.F.R. § 960.609.

Earned Income Disregard

Reason(s) for regulatory streamlining: (c).

The Earned Income Disregard (EID) allows a program participant who receives an increase to his or her income to keep all of that increase, instead of providing additional rent for 24 straight months.²⁶ While NAHRO supports the idea of incentivizing work and finds that it is beneficial to families, the EID is cumbersome to administer, even after the changes made in HUD's streamlining rule, requiring significant resources disproportionate to the benefit that it provides.

For these reasons, NAHRO recommends that the EID be made optional, so that it is implemented only by those program administrators that wish to. Additionally, if a program administrator chooses not to implement the EID and HUD moves toward biennial income recertifications and adopts a method to streamline interim recertifications, then there will naturally be a period when a program participant can keep additional earned income. Thus, the incentive to work remains strong, while the administrative burden has been eliminated.

Section 8 Management Assessment Program - SEMAP

Reason(s) for regulatory streamlining: (b) and (c).

Given the potential future fiscal constraints on the Housing Choice Voucher Program, NAHRO recommends that the Department suspend SEMAP ratings for the purpose of sanctions until such time as administrative fees are restored to fully-funded or near fully-funded levels.²⁷ Until that time, HUD should provide PHAs with SEMAP scores that are purely advisory. Any PHA with a "troubled" SEMAP rating should remain subject to its Corrective Action Plan, but special consideration should be given to those PHAs regarding their ability to meet deadlines established under such plans.

NAHRO also recommends that the Department temporarily modify or suspend the following SEMAP requirements to reflect the capacity of agencies under reduced funding levels:

- Lengthen deadlines for property owners' correction and PHAs' verification, of "minor" housing quality deficiencies other than exigent health and safety violations;
- Suspend sanctions for failure to use at least 90 percent of vouchers or funding;
- Suspend requirements to expand housing choice outside concentrated areas of poverty; and
- Suspend requirements to enroll families in the family self-sufficiency (FSS) program and to help FSS families achieve increase in employment income.

Additionally, in any reform of SEMAP, HUD should make sure that the basis for all requirements is based on data that HUD already collects. It should not add any new collection requirements or surveys for PHAs.

Rent Reasonableness

Reason(s) for regulatory streamlining: (b) and (c).

HUD should investigate scenarios where rent reasonableness analysis is not necessary and make exceptions for those areas. For example, currently, the Small Area FMR final rule requires rent reasonableness reviews when Small Area FMRs decrease by ten percent.²⁸ NAHRO suggests that rent reasonableness not be required when PHAs are using Small Area FMRs. NAHRO also suggests that rent reasonableness not be required when the PHA is operating in a tight rental market (e.g., an area with a less than 5 percent vacancy rate). In these conditions, just finding a unit within the payment standard is difficult. There is no need to require the additional work of a rent reasonableness analysis. NAHRO invites HUD to investigate other scenarios where rent reasonableness analysis is superfluous.

²⁶ See 24 C.F.R. §§ 5.617, 960.255.

²⁷ See 24 C.F.R. Part 985.

²⁸ 81 Fed. Reg. 80,575.

Utility Allowances

Reason(s) for regulatory streamlining: (c).

As has been NAHRO's long held position, HUD should publish the utility data it has when it calculates FMRs.²⁹ PHAs should be able to have the option of either looking to this data when calculating their utility allowances or making a utility determination themselves. HUD should complete a holistic review of utility allowances to see how else the process can be streamlined.

Executive Compensation Reporting

Reason(s) for regulatory streamlining: (c).

NAHRO understands HUD's statutory requirement to collect information on salary and bonuses from the top management and financial official as well as the highest paid employee outside of those roles at all PHAs. However, NAHRO remains concerned about the usefulness and relevance of this data collection and its implications regarding the value and merit of operating a PHA, an increasingly difficult and understaffed job.

NAHRO remains concerned that HUD does not understand the unique differences that exist between PHAs nationally that impact their overall operation. Although using a standardized drop-down menu of titles streamlines the form and allows the Department and others to more easily analyze executive compensation data, it erases meaningful differences among executive roles at varying PHAs. HUD Form 52725 places top management and financial officials into specific categories that often minimize additional roles they may be required to fill at their PHA. For example, this categorization obfuscates the difference between Executive Directors who have only a single set of responsibilities and those who have multiple titles. It also muddles distinctions between management officials whose sole responsibility lies with a PHA and city or county executives who have little to do with a PHA that is a component of a unit of the local government. The tasks and duties of each top management and financial official are not the same at every PHA across the country. PHA salaries should be allowed to reflect additional roles and tasks required of management and financial officials that may not be necessary at every PHA. An arbitrary cap on salaries and bonuses detracts from a PHA's ability to do this.

NAHRO would also like to take this opportunity to remind HUD that given the organizational and governance structures of PHAs, a database of salary and benefit information removed from the context of PHA size and location creates a false impression of comparability between PHAs. Without providing information regarding the job markets in which PHAs are located, the responsibilities included in each position, the seniority and experience level of the employee, the total budgets each PHA manages (including Public Housing, Voucher programs, Project-Based Section 8 Multi-family Housing Assistance, Low-Income Housing Tax Credits, Section 202, Shelter-Plus Care, state and locally-funded housing and homeless programs, other unrestricted general funds, etc.), such a database is ripe for exploitation and misinterpretation, thus running entirely counter to HUD's justification of transparency and accountability.

²⁹ See NAHRO's previous comment letter on FMRs. (http://www.nahro.org/sites/default/files/searchable/Comment-Proposed_FY_2016_FMRs_Final.pdf.)

Community Planning and Development Recommendations

Consolidated Plan Process

Reason(s) for regulatory streamlining: (b) and (c).

On December 16, 2016, HUD's Office of Community Planning and Development (CPD) published a final rule that adds the concepts of broadband access and vulnerability to natural hazard risks to the Consolidated Plan's existing housing market analysis requirements, as well as the consultation and citizen participation requirements. According to HUD, this rule seeks to "promote a balanced planning process that more fully considers the housing, environment, and economic needs of communities." NAHRO recommends³⁰ the removal of natural hazard risks analysis from the consolidated planning process at 24 C.F.R. Part 91 for states³¹ and local governments³², since this type of analysis is outside the scope of the CPD formula grant programs' activities, and agencies that are responsible for submitting the Consolidated Plan do not have the administrative authority to assess and mitigate risks from natural disasters.

HOME Investment Partnerships Program (HOME)

Reason(s) for regulatory streamlining: (a), (b) and (c).

CHDO Definition: HUD's 2013 HOME Final Rule³³ changed the Community Housing Development Organization (CHDO) definition³⁴ and implemented new qualification and capacity requirements that are stricter than statute. Now non-profit 501(c)(3) organizations cannot operate as they were allowed under federal law, which includes allowing them to contract out for consulting services, share staff, and work with volunteers and donated services. While NAHRO understands HUD's interest in ensuring that grantees have demonstrated capacity, we believe that the overly restrictive CHDO definition will take away options to develop affordable housing by eliminating many, if not most, of the smaller and rural CHDOs which were operating under these allowances until the final rule was established. CHDOs are now being forced to hire employees to carry out what CHDOs had previously been accomplishing through other legitimate means, at a time when HOME funding levels are at an all-time low and appear to be further decreasing, leaving a very limited administrative budget.

Prohibition of PHAs Acting as CHDOs: NAHRO disagrees with HUD's prohibition of PHAs acting as CHDOs due to HUD defining them as governmental entities. PHA non-profit subsidiaries have a proven track record nationally, especially in successfully accessing Low-Income Housing Tax Credits, HOME, and other state funding sources to develop affordable housing. HUD should reconsider this position and instead adopt the definition of "non-profit participation" used under the Internal Revenue Code, which is both flexible and practical and generally requires an experienced partner organization.

Furthermore, NAHRO has posed certain questions to HUD regarding the ability of Section 8 only PHAs that are 501(c)(3) private nonprofit organizations to qualify as and/or staff CHDOs. HOME regulations define "Public Housing Agency" as "any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act." However, the Quality Housing and Work Responsibility Act (QHWRA) of 1998 amended the U.S. Housing Act of 1937 to provide a more thorough definition of a "Public Housing Agency" that accounts for nonprofit entities that administer Section 8 tenant-based rental assistance. These nonprofits are party to an Annual Contributions Contract with HUD and are statutorily considered "public housing agency." Consequently, many nonprofits (including experienced organizations) are now unjustly barred from acting as a CHDO. A 2014

³⁰ See NAHRO comment letter (<http://www.nahro.org/sites/default/files/searchable/NAHROComment-ModernizingConPlanFinal-signed.pdf>)

³¹ See 24 C.F.R. §§ 91.110(a), 91.115(a)(2)(ii), 91.300(v), and 91.310(a)(3).

³² See 24 C.F.R. §§ 91.100(a)(1), 91.105(a)(2)(ii), 91.200(b)(d)(v), and 91.210(a)(v).

³³ 78 Fed. Reg. 44,627.

³⁴ See 24 C.F.R §§ 92.2, 92.208, and 92.300.

internal audit of NAHRO members found at least sixty 501(c)(3) private nonprofit organizations that are classified as a PHA due to their administration of Section 8 assistance.

Terminated Projects: A HOME-assisted project that is terminated before completion, either voluntarily or involuntarily, constitutes an ineligible activity, and the participating jurisdiction (PJ) must repay any HOME funds invested in the project³⁵. NAHRO believes termination and immediate repayment of such funds is an extremely punitive action, and one that fails to acknowledge other, more constructive, options. Under CDBG, for instance, HUD has allowed grantees to replace such funding for other projects funded with non-federal sources, reduced future grant amounts, or even forgiven such funding if the grantee was able to demonstrate a good-faith effort and due diligence.

Sale of Homeownership Housing: HOME regulations require for-sale homes developed with HOME funds to be sold within nine months or be converted to HOME rental housing for low-income households.³⁶ This has had a chilling effect on the ability of PJs to find nonprofits or CHDOs to carry out single-family housing programs involving the acquisition/rehabilitation/resale approach. These organizations generally do not desire to be long-term landlords of rental property. This requirement should be changed to provide at least 12 months, and it should emphasize the maintenance of that property in the interim period by the non-profit.

Elimination of the 24-month Commitment Deadline: Although a statutory requirement, HUD should support the elimination of the 24-month commitment requirement for each PJ's HOME allocation, including the CHDO set-aside. Since HUD's implementation of the 2013 HOME Final Rule now requires all HOME project financing to be secured prior to a commitment of funds, the commitment deadline is now more difficult to meet and is an unnecessary interim step towards the completion of a project by the 4-year completion deadline. In order to support accountability and the effective administration of HOME, HUD should encourage Congress to eliminate this commitment requirement.

³⁵ See 24 C.F.R. § 92.205(e).

³⁶ See 24 C.F.R. § 92.254(a)(3).

Cross-Cutting Programs

Rental Assistance Demonstration (RAD)

Reason(s) for regulatory streamlining: (a) and (c).

NAHRO strongly supports RAD as one option for PHAs to leverage additional funds to address the Public Housing capital needs backlog. Although RAD does not work for all PHAs, it is a critical tool that has allowed many PHAs to update, modernize, and improve the quality of their housing stock.

To encourage and ease the creation of mixed-income developments through RAD, NAHRO encourages the Department to allow RAD agencies to use rent averaging to determine the cost per unit after conversion as opposed to providing their flat Operating Fund. This would ensure that PHAs would be able create more diverse developments with mixed-income households, provide a stable income stream to the PHA, which in turn would allow them to more easily house very- and extremely-low income households. Furthermore, this would help deconcentrate poverty within affordable housing developments, and be cost-neutral to HUD.

Section 3 Reporting

Reason(s) for regulatory streamlining: (a), (b) and (c).

The Section 3 statute sets an expectation that the requirements will be met by recipients of certain HUD financial assistance to the “greatest extent feasible.”³⁷ Given the historically low funding for the Operating Fund, NAHRO believes that the extra administrative costs associated with fulfilling Section 3 requirements are simply not feasible in this environment. We urge HUD to take meaningful action to ease the administrative burdens associated with Section 3 compliance and reporting.

Currently, HUD fails to recognize the administrative burdens of implementation and compliance of Section 3. The Department has chosen to implement Section 3 using overly narrow and prescriptive requirements that limit the possible avenues for compliance with the spirit of the statute. By narrowing the definitions of what satisfies Section 3 requirements, the Department is actually discouraging its grantees from undertaking additional activities that meet the goals of Section 3.

NAHRO feels strongly that economic opportunities and incentives for self-sufficiency for low-income persons are extremely important for persons receiving housing assistance and, just as urgently, for those who are not. That said, we are concerned about the efforts of HUD’s 2015 proposed rule³⁸ to increase the program requirements without any additional funding to cover administration costs for PHAs.

Affirmatively Furthering Fair Housing

Reason(s) for regulatory streamlining: (a) and (c).

While NAHRO is a strong proponent of the Fair Housing Act to both fight discrimination and to affirmatively further fair housing, NAHRO has serious concerns about the implementation of the rule through HUD’s tools. As written, the Affirmatively Furthering Fair Housing (AFFH) final rule and subsequent Assessment of Fair Housing (AFH) tools are ineffective in reaching their overall goal. It is imperative that HUD program participants, and all offices of HUD, including PIH, CPD, PD&R, and FHEO, have equal footing in improving the AFFH process so that it is practical, effective, and ensures achievement of its intended goals.³⁹

³⁷ See 12 U.S.C. § 1701u.

³⁸ 80 Fed. Reg. 16,519.

³⁹ Please see NAHRO’s most recent comment letter on the Local Government tool

(<http://www.nahro.org/sites/default/files/searchable/NAHROComment-AFHStateandInsularTool30Days-signed.pdf>) and NAHRO’s most recent comment letter on the PHA tool

(<http://www.nahro.org/sites/default/files/searchable/NAHRO%20Assessment%20of%20Fair%20Housing%20Tool>)

To guide HUD in its efforts to streamline the process, NAHRO suggests that HUD follow these principles:

- HUD should ensure that any final tools are able to be completed by the entities for which they were drafted without any entity requiring an outside consultant. Although HUD has stated the previous tools met this standard, the industry consensus has been that most entities required a consultant to complete their AFHs. HUD should not finalize any tool unless a majority of the feedback from PHAs and industry groups state that the tool can be completed without the use of a consultant.
- The number of questions on each tool should be reduced so that only the essential information is collected. Information should not be asked more than once.
- Mandatory analysis should be limited to only those things that are absolutely required.
- The thresholds for which entity can use simplified tools should be increased:
 - PHAs with up to 5,000 units of Section 8 or Public Housing units, and
 - Local governments that receive an annual CDBG grant of \$1,000,000 or less.

Davis-Bacon Prevailing Wage Threshold

Reason(s) for regulatory streamlining: (a) and (b).

Although set statutorily, NAHRO requests that HUD encourage Congress, through budget-appropriations language or other mechanisms, to increase the contract threshold requiring the locally prevailing wage rate to be paid to various classes of laborers and mechanics working under federally-financed or federally-assisted contracts for construction, alteration, and repair of public buildings or public works (Davis-Bacon Act) and index it to inflation. Currently, Davis Bacon wage rates are set at \$2,000, an incredibly low and out-of-date number that has not been adjusted for 85 years. NAHRO recommends updating the Davis-Bacon threshold by adjusting the threshold to the current value and then applying an inflation adjustment moving forward.

Procurement

Reason(s) for regulatory streamlining: (a), (b) and (c).

Although NAHRO understands procurement is the purview of the OMB and not HUD, NAHRO recommends that HUD encourage OMB to increase the threshold for micro purchases from \$3,000 to \$10,000. This would allow PHAs to purchase their everyday operational needs which are naturally competitive in the marketplace.

Limited English Proficiency (LEP)

Reason(s) for regulatory streamlining: (c).

In 2007, HUD published guidance titled “Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.” HUD recipients of financial assistance are required to “take reasonable steps to ensure meaningful access to their programs and activities by [LEP] persons.”⁴⁰ To determine what constitutes “reasonable steps to ensure meaningful access,” HUD’s guidance recommends a four-step individualized assessment.

The four factors of the individualized assessment that require balancing are the following:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
2. The frequency with which LEP persons come in contact with the program;

[%20for%20Public%20Housing%20Agencies%20Comments_30%20Day%20Solicitation%20of%20Information%20Collection.pdf](#)) for additional insight.

⁴⁰ 72 Fed. Reg. 2,740.

3. The nature and importance of the program, activity, or service provided by the program to people's lives; and
4. The resources available to the grantee/recipient and costs.⁴¹

HUD recipients are also encouraged to develop and maintain written plans on language assistance for LEP persons or a Language Access Plan (LAP) for use by recipient employees serving the public.

While NAHRO strongly supports the intent and principles of this guidance, NAHRO has suggestions for streamlining. First, NAHRO believes that the four factor analysis to determine what should constitute reasonable steps should be condensed to the following two factor analysis:

1. The number of LEP persons served by the program or grantee; and
2. The resources available to the grantee/recipient and costs.

NAHRO believes that this will be a simpler analysis that will still effectively serve LEP persons. Additionally, the guidance should be changed to allow recipients to rely upon adult family members or friends of the LEP as interpreters. There should also be safe harbors for PHAs that can document they have complied with the two factor analysis for translation of both written materials and for oral interpretation services. This change will greatly help small PHAs and those in rural areas to follow the intent of the old guidance without the onerous administrative burden.

Violence Against Women Reauthorization Act of 2013 (VAWA 2013)
Reason(s) for regulatory streamlining: (b).

HUD's Notice of Occupancy Rights under the Violence Against Women Act (Form HUD-5380), as included in 24 C.F.R. Part 5.2005(a) et. al., is overly long and burdensome to distribute to tenants and applicants of covered housing providers. This notice, along with the Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation (Form HUD-5382), are 10 pages total. This creates a significant impediment to having tenants actually read the entire notice and certification form. These documents must be provided at the time an applicant is denied or provided assistance or admission, with any notice of eviction or notification of termination of assistance, and to all existing tenants within 12-months of the HUD's effective date of the "VAWA 2013: Implementation in HUD Housing Programs" Final Rule⁴². NAHRO members have noted that the notice of occupancy would be more effective if it were shorter, while still advising applicants and tenants of their VAWA rights and the tools and resources available to help victims. Current regulations only require the HUD-provided notice to include the explanation of VAWA protections (including the right to confidentiality and any limitations on those protections). Thus, HUD does not need to implement rulemaking to further reduce the length of the notice of occupancy rights.

Reduced Reliance on Guidance
Reason(s) for regulatory streamlining: (c).

NAHRO laments HUD's excessive reliance on guidance documents. In the Public and Indian Housing context, this guidance takes the form of PIH notices. In the Community Planning and Development context, this takes the form of CPD notices. Many of these documents have the same effect as regulation and are given deference by local courts, but have not gone through the informal rulemaking process. The informal rulemaking process guarantees that all HUD stakeholders have the opportunity to comment on the rules that affect them and the families they serve. By publishing guidance, HUD lowers transparency by issuing rules created by unelected officials without input from the public. While NAHRO understands that there are times that a statute gives HUD the authority to promulgate a notice instead of a regulation so that HUD can quickly implement statutory provisions, these instances should be the exception rather than the rule.

⁴¹ 72 Fed. Reg. 2,740.

⁴² 81 Fed. Reg. 80,724.

HUD should initiate a process to review all PIH and CPD notices and remove those that add additional administrative burden without a proportional benefit.

Additionally, for the notices that HUD does publish, all of them should be required to include the following:

- Expiration dates not in excess of a year after they are published;
- The statutory or regulatory basis for the guidance; and
- Accurate and up-to-date contact information for a person knowledgeable about the guidance.

Federal Housing Administration Public Mortgagor Certification

Reason(s) for regulatory streamlining: (b) and (d).

NAHRO's membership includes PHAs that participate in public-private partnerships that bring alternative affordable home mortgage products to consumers seeking to transition to responsible homeownership. Government entities (such as PHAs) that participate in FHA Nonprofit Programs do not require FHA approval to do so, yet newly qualified governmental entity mortgagors must still endure a time-consuming and outdated process of waiting for the FHA to enter and manually authorize their mortgagor tax ID numbers in order for lenders to receive assigned case numbers to enable originations. To reduce administrative burdens on PHAs and their lenders, and also on HUD Homeownership Center staff, NAHRO recommends that HUD simplify its origination systems and the process for registering government housing agencies as mortgagors for the purposes of FHA insurance eligibility. The system should allow for more automated integration of qualified mortgagors and the assignment of origination case numbers. HUD should also improve its training for HUD Homeownership Center staff on entering new tax identification numbers and provide clearer instructions to lenders to increase turn times. These changes would allow PHAs and their lenders to provide their product more quickly to consumers looking for affordable housing.

Conclusion

As always, NAHRO appreciates the opportunity to comment on this important Notice. NAHRO has long called for meaningful and substantive regulatory relief for housing agencies and other HUD grantees. Like in many policy areas, increased regulatory burdens have had an adverse impact on the ability of affordable housing providers to maximize their dollars spent to provide safe and decent affordable housing to households.

NAHRO is pleased by the Department's efforts to streamline regulations, however, we reiterate that no amount of regulatory streamlining will make up for the extremely deep cuts to programs that help support our nation's most vulnerable people and help to develop and revitalize communities proposed by the Administration's budget. While NAHRO is committed to working with HUD on regulatory reform, NAHRO notes that this reform does not replace the need for adequate funding for these essential programs.

This comment letter is a non-exhaustive list of potential actions that would result in regulatory streamlining and relief and is the start of a much larger conversation between the Department and NAHRO. We look forward to continued dialog with HUD regarding regulatory streamlining and relief, and we expect to identify additional avenues for further regulatory streamlining, which we will share with the Department.

Please do not hesitate to contact us to provide additional information and clarification on any of the topics mentioned in our comment letter. NAHRO would be happy to forward or supply any previous comments or correspondence we have made in the past on the above topics, or provide additional comments clarifying our positions.

Thank you,

A handwritten signature in dark green ink, appearing to read 'Georgi Banna', with a long horizontal flourish extending to the right.

Georgi Banna
Director, Policy and Program Development