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Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
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Room 10276
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FR Doc. FR-6030-N-01 Public comment on Reducing Regulatory Burden: “Enforcing the Regulatory Reform Agenda Under Executive Order 13777”

The National Housing Conference (NHC) is pleased that the Department of Housing and Urban Development (HUD) is taking a comprehensive look at the regulatory environment for affordable housing. The many stakeholders in housing rely on clear and stable expectations in order to do the business of housing, whether that business is creating and preserving homes, delivering assistance to those in need, providing capital, encouraging economic and community development, or making housing markets function efficiently. The comments we offer here aim to assist HUD in creating the clear and stable expectations that are so essential to creating the economic opportunity that all in America seek.

I. About the National Housing Conference

Everyone in America should have equal opportunity to live in a quality, affordable home in a thriving community. The National Housing Conference educates decision makers and the public about housing policies and practices to move housing forward together. NHC convenes and collaborates with our diverse membership and the broader housing and community development sectors to advance our policy, research and communications initiatives to effect positive change at the federal, state and local levels. Founded in 1931, we are a nonpartisan, 501(c)3 nonprofit organization. NHC’s research team operated as the Center for Housing Policy until the organizations merged in 2013.

II. Creating lasting clarity in housing policy

NHC urges HUD to find the right mix of changes to existing policy, elimination of requirements, and new implementation of statutorily-guided regulations to create clear and stable rules of the road for housing. If there are policies that are blocking needed private action, certainly HUD should examine them closely. There are many areas, however, where simple timely clarification by HUD could enable private development and property operations to move forward.

As an analogy, think of regulations and agency guidance as railings on a bridge. If railings are too low, travelers can fall off. If railings are too high, they can obscure visibility. If railings jut out into the path, they can prevent forward motion. Missing railings entirely, however, could be even more dangerous. We hope HUD will take this opportunity to repair and adjust railings as appropriate, not to merely chop away at sections simply for reductions sake.

Furthermore, when prioritizing which regulations to address under Executive Order 13771, HUD should evaluate both the cost to stakeholders and the mission impact of its policies. A cost-only approach to prioritizing could actually increase costs in the future by reducing community and economic development benefits created by affordable housing policy in exchange for potentially minimal savings.

III. Areas for improvement in HUD regulations and guidance

We recommend HUD take actions in several areas to clarify or streamline existing regulations and guidance to enable more efficient provision of affordable housing and stronger investment in communities across America.

A. Affirmatively Furthering Fair Housing

Secretary Carson recently described the Fair Housing Act of 1968 as “one of the most beautiful pieces of legislation that we’ve ever crafted in a bipartisan fashion” and stated his commitment to “enhance everything we can to make all housing policies fair for every group in our society.”¹ HUD issued implementing regulations for the Fair Housing Act’s requirement to affirmatively further fair housing (AFFH) for the first time in 2015; HUD created the rule to simplify and clarify a previous process done through administrative guidance. Although the obligation to affirmatively further fair housing is long-standing, patterns of residential segregation have proved durable in many places.

NHC supports the collaborative and incremental process of AFFH. The proposed rule was open for public comment for 90 days and the assessment tools for states, local governments, and public housing agencies were each open for multiple rounds of comments. The final rule provides an ongoing regulatory process of implementation and improvement. Communities will create an Assessment of Fair Housing on the same schedule that they would have followed to create an Analysis of Impediments (the previous planning requirement).

The AFFH process is community-driven by design. Communities gather input from stakeholders, examine their own existing policies and consider options for improvement. HUD provides data and guidance in this process but does not prescribe a particular outcome. It also encourages grantees to cooperate regionally to analyze their fair housing policies, thereby saving duplication of effort.

No process is perfect or effortless, and the AFFH process certainly can be improved. The best way to identify those improvements is to allow communities to continue working through it locally and solicit suggestions for improvement. Halting or changing the rule abruptly would only slow down the process for improvement, particularly for the communities already engaged in planning. Therefore we recommend that HUD maintain the existing AFFH process even as it requests comments for improvement and streamlining.

B. Fully Implement Housing Opportunity Through Modernization Act (HOTMA)

Last year, Congress unanimously passed and President Obama signed into law the Housing Opportunity Through Modernization Act (HOTMA). HOTMA is the first major federal housing legislation in almost two decades. The bipartisan legislation addresses changes to federal housing programs that will increase the effectiveness of rental assistance, achieve cost savings, and ease administrative burdens for housing authorities and owners. HUD has already issued some regulations to implement important sections of HOTMA that will achieve these goals. We urge HUD to complete implementation of the remaining regulations related to HOTMA as efficiently as possible.

HOTMA provides public housing authorities (PHAs) with important flexibility in the administration of the Section 8 voucher program. This flexibility is intended to make the voucher program more cost-effective and efficient in providing housing assistance to low-income households. We appreciate HUD’s careful consideration of the implementation of HOTMA and its guidance intended to ensure that operational changes are consistent with PHAs’ administrative plans and other requirements. While we value HUD’s oversight role and understand the importance of a clear and current administrative plan, we are concerned that if the administrative burden of implementing HOTMA provisions is too great,

¹ Remarks by Dr. Ben Carson, Secretary of Housing and Urban Development, at the National Housing Conference’s Annual Policy Symposium, June 9, 2017.

PHAs will not implement these valuable changes. Accordingly, we encourage HUD to help PHAs achieve the efficiency and flexibility intended under HOTMA by minimizing the number of required HUD reviews and approvals and by permitting clear but flexible implementing language in PHA administrative plans to avoid unnecessary and time-consuming revisions.

1. Exceptions to project-based voucher (PBV) Program Unit Calculation

NHC recommends making two specific exceptions to the project-based voucher program unit calculation so that public housing agencies have the appropriate amount of flexibility in deploying project-based vouchers. Vouchers in difficult to use areas, off-site replacement units and supportive services should be exceptions to the PBV program unit calculation.

a) Exception for “Difficult to Use” Areas

To define or determine the areas whether vouchers are “difficult to use” for this exception category, we support the two-part definition provided by the Center for Budget and Policy Priorities in its comments, to better target areas where more development is needed, as well as those areas that have rental housing in the right price range but the stock inadequately serves voucher holders. Specifically:

Tenant-based vouchers should be considered “difficult to use” in an area if:

1. The ratio of vouchers (tenant-based and project-based) leased in a zip code to the total number of housing units in the zip code (rental or homeownership) is below the national average; or
2. The ratio of vouchers (tenant-based and project-based) leased in a zip code to the total number of rental units in the zip code with gross rents below 110 percent of the applicable Fair Market Rent is below the national average.

In non-metropolitan areas, the measures shall apply at the county rather than zip code level.

b) Replacement Units

We appreciate HUD’s thoughtful consideration of which new construction housing units should qualify as replacement housing units and therefore be exempt from the program unit limitation. However, contrary to HUD’s guidance, eligibility as a replacement unit should not be limited to units on the site of the original public housing development.

Deconcentration of poverty and the creation of sustainable, mixed-income communities is often a central goal of redevelopment and drives plans that include development of off-site replacement units. Offsite replacement units remain a critical portion of the affordable housing stock in many communities and failure to exempt them from the program cap could ultimately reduce the number of long-term affordable housing in a PHA’s jurisdiction or erect disincentives to creation of mixed-income communities. The language of the statute does not require this distinction, so we recommend its deletion.

c) Standards for Supportive Services

We applaud the modified supportive services exception to the project cap, which should better facilitate the operation of supportive services. HUD should continue to allow PHAs flexibility in defining supportive services in accordance with the needs and infrastructure in their communities and should encourage PHAs to include in their administrative plans a menu of eligible services that would allow owners to tailor services to resident needs while remaining eligible. Properties operating with a supportive services exception should have a written plan for supportive services based on an assessment of projected or actual resident needs.

2. Do not create a cliff for FSS families

However, we urge HUD to withdraw the draft language related to the Family Self-Sufficiency (FSS) program that in effect creates an unnecessary cliff for participating families. The language states that if an FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for the supportive services, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying housing assistance payments on behalf of the ineligible family. FSS is a voluntary program and a family which fails to succeed in FSS with “good cause” should not be required to move out of its unit and that unit should remain exempt. Other families in the public housing or voucher program that do not meet the requirements of their FSS

contracts will forfeit the escrow set aside for them. It seems punitive that PBV families should also lose their housing as well as forfeiting the escrow if this regulation is not modified. Further, research has shown that creating cliff-like requirements actually undermines the constructive long-term decision-making that FSS aims to encourage.²

C. Enhanced Vouchers: lease addendum and regulations

Congress enacted unified Enhanced Voucher authority to protect tenants residing in converted properties in 1999, which built upon an earlier statutory commitment that emerged at the end of the Low Income Housing Preservation and Resident Homeownership Act preservation program. Enhanced vouchers protect tenants by allowing them to remain in place even when a property changes its rent structure, and they protect owners by ensuring that tenants who remain can pay new, higher rents. They are a logical minimum protection to ease the process if a property converts its use.

For almost 20 years, HUD has failed to enact regulations implementing this authority, relying instead on occasional sub-regulatory guidance that does not adequately carry out the statute and protect tenants. In October of 2016, HUD finally proposed regulations to address this problem, which, among other things, failed to ensure that all affected income-eligible tenants received enhanced vouchers and failed to protect tenants' right to remain (81 Fed. Reg. 74372, October 26, 2016). A required lease addendum is essential to effectuate these long-standing protections, so that tenants, owners, public housing authorities and courts actually know that tenants actually have enhanced vouchers with special protections. To effectuate Congress' intent that tenants not be displaced by conversions, HUD should promptly issue a required lease addendum and regulations that effectively protect Enhanced Voucher tenants and tenants facing conversions. Doing so would simplify for all concerned the implementation of the statutory protection that helps both tenants and property owners.

D. HUD-assisted multifamily housing: energy benchmarking

In December 2016, HUD requested comments on its proposed information collection of energy benchmarking for HUD-assisted multifamily housing. NHC submitted comments and reiterates those comments here. NHC welcomes HUD's action to gain a better understanding of the energy use in its portfolio; this action is important as part of the Department's work to ensure that HUD-assisted housing is not just affordable but also green and healthy. NHC continues to support energy benchmarking, but suggests that HUD create an official waiver process to make HUD's energy benchmarking more effective.

NHC's primary concern is that owners will not be able to retrieve the necessary data from utility companies. Access to building energy usage data is uneven across the country. Many utilities provide the data via fax, in a pdf format or via mailed copies which then have to be manually entered into Portfolio Manager, requiring hours of effort by property management staff. Other utilities do not have aggregated whole building data and will have to provide owner and tenant data separately to multifamily building owners, and to retrieve tenant data, utilities will need individual tenant release forms. Collecting tenant consent for existing tenants is a burdensome process. Some utilities also may not have the infrastructure in place to share energy data for multifamily buildings and may have difficulty matching buildings to accounts.³

While HUD's adoption of benchmarking may help encourage utilities to be more forthcoming with energy consumption data, owners will have to make a significant level of effort in certain regions across the country. In the proposal, HUD stated that "HUD will consider requests for additional time to submit benchmarking data from owners who experience unexpected delays in obtaining sufficient sample data from utility providers or encounter unforeseeable technical

² Maya Brennan, "Strengthening Economic Self-Sufficiency Programs: How Housing Authorities Can Use Behavioral and Cognitive Science to Improve Programs," National Housing Conference, June 2014. <http://www.nhc.org/2014-economic-self-sufficiency>

³ Recommendations and Best Practices for Benchmarking Multifamily Buildings. ACEEE. May 2014. <http://aceee.org/sites/default/files/pdf/benchmarking-multifamily-buildings.pdf>

difficulties.” Instead of allowing individual properties to request additional time, HUD should create a waiver process that recognizes locations and regions where gathering this data will be infeasible because of utility policy on aggregated data and multifamily buildings. This action would create an efficient and flexible waiver process, and this process can be amended as more utilities engage in providing greater data access. A HUD process that identifies places and utilities that do not provide sufficient support for benchmarking may also help to create an incentive for improvement in those areas.

E. HUD Partner Screening and Compliance Tools

HUD faces a challenging task in creating systems and processes for evaluating the suitability of entities for operating properties in its project-based rental assistance (PBRA) programs and for ensuring that owners manage these properties appropriately. HUD must balance a system that avoids undue administrative burdens for its partners (or HUD staff) while maintaining processes that effectively identify owner mismanagement or properties in danger of becoming distressed. HUD has a responsibility to preserve its limited stock of housing with project-based assistance that provides long-term affordability for extremely low-income residents in a variety of neighborhoods. When appropriately formulated, these systems will successfully identify owners and properties at risk of failure without subjecting successful owners or properties to undue burden or expense. The difficulty of creating an appropriate set of screening procedures is the tendency to miss entities at risk or to over-scrutinize those not at risk, and the tendency to focus on checklists and documentation rather than on maximizing program performance.

HUD has made significant progress in modernizing its systems for evaluating the performance of owners and the conditions in assisted properties, but it can do more to streamline evaluation systems and reduce regulatory burden.

In general, we encourage HUD to simplify compliance by aligning, where feasible, administrative requirements across rental assistance programs, similar to the effort reflected by Docket No. FR 5743-F-03 published in the Federal Register on March 8, 2016, and implemented, in part, by Housing Notice H-2016-09. Such efforts reduce the cost and complexity of participating in HUD’s rental assistance programs, which will in turn reduce program costs and improve housing choices for households receiving HUD rental assistance. We also encourage HUD to continue its approach to risk-based management, so that more attention focuses on those owners and properties exhibiting greater risk of distress, rather than applying the same requirements and scrutiny to every property. HUD should also explore ways to reduce redundant review for owners with multiple properties.

1. Property Inspections by the Real Estate Assessment Center (REAC)

HUD should continue its process for ensuring that REAC inspections focus on elements that are important to the health and safety of residents and on material physical issues and deferred capital needs. While no assessment system is perfect, REAC inspections should avoid large penalties for relatively minor issues. HUD should continue to explore ways to extend the time between inspections for properties that demonstrate good physical conditions.

A significant proportion of the nation’s affordable properties are assisted by multiple federal and state programs, including combinations of Low-Income Housing Tax Credit (Housing Credit) capital, FHA-insured debt, HUD rental assistance, and other state capital programs (some derived from HUD grant programs). The Rental Policy Working Group’s 2011 paper on Federal Rental Alignment found more than 9,000 Housing Credit properties assisted by at least one other federal program, comprising 645,000 housing units. These properties are subject to redundant and inefficient oversight during both the transaction phase and during their ongoing operations.

For properties that have received Housing Credits or other state-administered capital programs, HUD should devolve responsibility to the appropriate state agency for underwriting and subsidy layering review, design/scope review, environmental review and ongoing physical inspections. In many cases, state agencies are best-positioned to play these roles. HUD should take on a higher level of oversight responsibility only when HUD determines an owner or property represents a higher risk or if a state agency fails to properly oversee elements of this oversight.

Beginning in 2010, an interagency effort identified a number of duplicative or sometimes inconsistent guidance for federal housing programs from HUD, the U.S. Department of Agriculture (USDA), and the Treasury Department that identified several opportunities to reduce compliance requirements related to property inspections, audits, income eligibility and documentation, appraisals and market studies, and related issues. While some progress was achieved, we urge HUD to continue these efforts with particular regard to eliminating inconsistent or duplicative requirements among various HUD programs and between HUD programs and the Housing Credit.

In addition, for Section 8 assisted properties with FHA or Risk-Sharing loans, HUD should direct its lending partners to rely on the results of the REAC inspections rather than conducting their own. We understand that some Risk-Sharing state Housing Finance Agencies (HFAs) are interesting in coordinating more fully with REAC, but need permission to make the necessary adjustments to their Risk-Sharing agreements with HUD.

2. *Management and Occupancy Reviews (MORs)*

HUD uses MORs to evaluate the systems and processes of property owners for fulfilling HUD rental assistance policies and regulations. HUD is now complying with court-imposed requirements to rebid project-based Section 8 contract administration, including MORs, nationally. As HUD moves forward with this process, we urge the Department to adopt a risk-based review system that provide for longer periods between reviews for owners with the best track records, reducing costs for owners and the agency without compromising compliance (as proposed by HUD in the Federal Register on January 14, 2015 in Docket Number FR-5654-P-01 and FR-5654-N-02).

3. *Integration of HUD Review and Enforcement Activities*

There have been recent high-profile examples of HUD-assisted properties that were mismanaged to the point of severe distress that exposed weaknesses in HUD's ability to identify troubled owners and properties and to take appropriate early action to restore such properties to good condition. Partly as a result of these developments, HUD has improved coordination and actions among the Office of Asset Management and Portfolio Oversight, Performance-Based Contract Administrators, REAC, the Departmental Enforcement Center, and the Office of General Counsel. HUD has also strengthened its ability to exercise its authorities to intervene in such cases, including its ability to support putting properties into receivership. Where HUD determines that an existing owner cannot or will not correct problems, it should use receivership and other available tools to affect transfers to responsible, high-capacity long-term owners.

The goal of these actions should be to preserve affordable housing and ensure decent living conditions for residents. Abatement of assistance contracts should be a remedy of last resort, since it displaces current residents from their homes and their social support systems, and it removes the long-term affordability from the property. HUD should continue to seek ways to coordinate and integrate its systems for identifying troubled properties and taking enforcement actions designed to restore good management to these properties as quickly as possible.

F. *Family Self-Sufficiency (FSS): allow full participation up to statutory limits*

We encourage HUD to strengthen the FSS program's work incentive by allowing participating families to use the program up to the full amount allowed by statute. Specifically, this means eliminating the existing cap on monthly escrow contributions for participant households above 50 percent of Area Median Income (AMI), which is not required by statute and which undermines the program's ability to incentivize resident earnings growth. Normally, HUD rental assistance pays the difference between the cost of rent and what a household can afford (defined as 30 percent of income), and so as earnings grow, housing assistance shrinks. FSS is designed to correct this earnings disincentive by allowing a participating household to save rent increases attributable to earnings growth in a special escrow account, the savings from which can be accessed for long-term financial goals like homeownership or education. In this way, FSS turns a disincentive into a powerful positive incentive for employment and earnings.

Under current program regulations, however, escrow contributions are capped once an FSS participant's income exceeds 50 percent of AMI.⁴ Given that 50 percent of AMI is not a "self-sufficient" wage in most parts of the country, we urge HUD to use its authority to allow FSS participants to escrow earnings growth up to the 80 percent of AMI consistent with statute. This should enable many more participants to attain a truly self-sufficient income level and to escrow sufficient savings to support a transition into the private housing market.

G. Simplify reserve for replacement accounts by aligning with lender oversight (24 CFR 880.602)

The regulations applicable to project-based Section 8 contracts issued after 1980 require that the owner establish a reserve for replacement account for the future capital needs of Section 8 properties. We support this requirement to help ensure the good physical condition and future viability of the property; however we urge HUD to modernize the requirement. The regulations were written nearly forty years ago when the assisted properties were first constructed or rehabilitated and when financing structures were significantly less complicated. As these properties age and are recapitalized, they are typically financed with a new permanent mortgage loan and often with an equity investment, each of which carry their own reserve requirements and represent a more significant stake in the property than a rental assistance contract that can be terminated if the physical condition deteriorates. While these other sources have an interest in the physical and financial health of the property and are actively asset managing, HUD still requires a separate reserve for replacement requirement. In order to eliminate duplicative requirements and to avoid burdensome oversight requirements for HUD's asset management staff, we encourage HUD to revise the regulations to allow lender administered replacement reserve requirements to satisfy the Section 8 requirements, subject to periodic review of the Capital Needs Assessment and recommended reserve levels.

H. Revise Resident Services Coordination to enhance flexibility (Handbook 4381.5, Chapter 8)

Resident Services Coordinators in HUD-assisted properties connect residents to the services and supports needed for their dignity and success. For elderly households this may include connections to health services and supports for independent living. Recent research has shown that service coordination is linked to an 18% reduction in hospitalization for residents, representing not only an improved quality of life, but also potential cost savings. In family properties service coordinators can help residents connect to education, employment and financial stability resources. While quality service coordination can generate cost savings and provide work supports to residents in a manner consistent with HUD policy, current guidance limits the availability and effectiveness of these programs. We encourage HUD to revise the Service Coordinator handbook (Housing Handbook 4381.5, Chapter 8) to provide a more streamlined path for funding resident services coordination and to permit needed flexibility in communication and information sharing between the management agent and resident services coordinator. Updated procedures would facilitate the provision of services that would not only create cost savings but also support residents of assisted housing on a path to self-sufficiency. HUD should solicit input from stakeholders involved with Resident Services Coordinators as part of revising the handbook.

I. Multifamily FHA Insured Loans: update MAP guide

FHA insured loans for multifamily housing play an important role in making mortgage loans available for affordable rental housing. Construction to permanent debt products like the 221(d)(4) loan and long term refinancing loans under Section 223(f) help income-restricted properties access long term capital at the rates needed to maintain affordability. While these insured loan products are valuable tools for attracting private lenders to the affordable housing transactions,

⁴ See 24 CFR 984.305 (b)(1)(ii)), despite that the FSS authorizing statute provides discretion for HUD to continue escrowing for earnings growth up to 80 percent of AMI (see 42 USC 1437u(d)(1), "[...]The Secretary shall provide for increased rents for participating families whose incomes are between 50 and 80 percent of the area median income, so that any family whose income increases to 80 percent or more of the area median income pays 30 percent of the family's monthly adjusted income for rent.")

HUD's own outdated policies can preclude the use of FHA insured loans for the kind of housing that is consistent with HUD's goals. This, in turn, inhibits the creation of construction jobs and is inconsistent with HUD's mission. We encourage HUD to make updates to the Multifamily Accelerated Processing (MAP) guide that would expedite the production of quality affordable housing that connects residents to opportunity. Updates to the MAP guide should include solicitation of input from lenders, owners, and other program participants.

1. Noise levels (24 CFR Part 51, Subpart B)

HUD's noise analysis requirements address an important concern, but the required analysis is often costly and time consuming and can preclude the construction of transit-oriented housing that connects residents to jobs and education opportunities. There is significant demand for transit-oriented development in most communities, both market rate and affordable. Policies that delay or preclude such development are not only outdated, but delay the creation of construction jobs and also serve as an additional impediment to employment for the larger community by limiting the stock of transit accessible housing. We urge HUD to modify these regulations to expedite the process particularly for transit-oriented and mixed used developments.

2. Commercial Percentage (MAP Guide)

Housing in walkable communities connects residents to the services and employment opportunities they need for success and is commercially desirable. Evidence also suggests that housing in less auto-dependent areas is less like to be subject to a mortgage default. While demand for housing in mixed-use walkable communities has increased and is likely to continue to do so as Millennials form households and Baby Boomers seek sustainable housing options for retirement, FHA policies are inconsistent with this demand. Percentage limitations on commercial square footage limit the use of FHA insured loans in walkable and mixed communities. Better matching these requirements to demand and requirements for mixed-use communities would allow FHA insured loans to better stabilize recovering housing markets and serve as a catalyst for economic growth where demand is increasing. HUD made changes to commercial requirements for condominium building by mortgagee letter in 2012, but policies for the Section 221(d)(4) program remain limiting. We encourage HUD to review the proposals of the Congress for New Urbanism and the Regional Plan Association to better support walkable communities.⁵

3. Parking requirements (MAP Guide)

Providing parking spaces in a multifamily property is a significant cost factor, particularly in high cost markets where affordable housing is direly needed. Where frequent and reliable public transportation is available, less parking is needed. The current MAP Guide acknowledges the mitigating impact of public transportation. Similarly, as the population ages, some elderly properties will require fewer parking spaces. Excessive parking requirements increase the cost of providing and maintaining affordable housing. Separate HUD requirements and analysis of parking also duplicate local requirements. We encourage HUD to streamline its own parking requirements in a manner that recognizes the costs of providing parking, the needs of the individual property and the availability of public transportation, deferring to local requirements wherever possible.

J. Allow Properties to Expand Broadband Access with Existing Resources

NHC encourages HUD to continue its work promoting and facilitating broadband in affordable housing. NHC with our Connectivity Working Group has conducted [research](#) on the digital divide which highlights the importance of providing low-income renters with home broadband access. Having a home computer and internet access is increasingly important for individual and family well-being and self-sufficiency. The availability of internet access is associated with greater student achievement, improved health outcomes, less social isolation and more economic growth. However, low-income individuals, and especially very low-income renters, are much less likely to have internet access or a computer at home. This digital divide worsens economic inequality and risks leaving low-income families further behind.

⁵ Regional Plan Association, "The Unintended Consequences of Housing Finance," January 2016, <https://www.cnu.org/sites/default/files/RPA-The-Unintended-Consequences-of-Housing-Finance.pdf>

In 2013, 74 percent of U.S. households had home access to the Internet but only 46 percent of extremely low-income renters had home access to the Internet. Only 54 percent of very low-income renters had home access to the Internet. The digital divide is even worse for older adults and disabled individuals. Only 26 percent of very low-income senior renters have home Internet access, and only about one-third of very low-income disabled renters have home Internet access. These data clearly illustrates the importance of addressing the digital divide.⁶

NHC appreciates HUD's recent efforts to encourage housing providers and local communities to implement broadband in affordable housing through its recent rules on including broadband in HUD funded multifamily housing, both new construction and substantial rehabilitation, as well as including broadband planning in Consolidated Plans. NHC also supports the ConnectHome initiative and encourages HUD to move forward with the planned expansion as well as explore ways to better share best practices with the field.

As pilot programs are demonstrating, basic broadband provided at the property level can serve residents effectively while containing costs. HUD should modify existing guidance on uses of property funds to allowing properties to use available funds to implement cost-effective connectivity for residents. HUD should also support pilot programs to test different implementation methods. Building on these initial steps, HUD should explore treating cost-effective basic broadband as a standard operating cost for affordable housing properties. This would affect all HUD properties, but would be most meaningful for those using a budget-based rent calculation, such as Section 202, some project-based Section 8, Section 811, and others. For it to meaningfully affect public housing, HUD would need to revise additional guidance possibly through an "add-on" expense under the asset management formula in sec. 990.190.

K. Repeal Unnecessary HOME 24-Month Commitment Rule

NHC encourages HUD to consider repealing the 24-Month commitment rule that applies to the HOME program. The Fiscal Year 2017 Consolidated Appropriations Act (Public Law No. 115-31) included a suspension of the 24-month HOME commitment requirement for deadlines occurring in 2016, 2017, 2018, and 2019. NHC encourages HUD to fully repeal this requirement as it is burdensome for participating jurisdictions. The four-year completion deadline is sufficient to ensure the appropriate and judicious use of HOME funds.

L. Revisit FHA single-family home neighborhood revitalization tools, 203(b) and 203(k)

HUD should reconsider FHA regulations and policy that block developers' use of the Section 203 (b) and 203 (k) loan guarantee programs. Particularly, nonprofits working in cities with large stocks of reasonably priced single family homes would like to scale up their homeownership and single family rental efforts in neighborhoods that need access to capital. Past efforts to use the FHA guarantee products have met inconsistent application of regulations and subregulatory guidance. Limits on 1) how many loans one nonprofit can get guarantees on, and 2) how many loans can be guaranteed in any one neighborhood are not understood nor consistently communicated by HUD local offices, resulting in confusion for nonprofit developers and lack of access to FHA guarantees. Lenders who rely on HUD guidance are further deterred from using the programs by this inconsistency. FHA should reevaluate its existing policies, procedures and regulations as well as the implementation by field offices to make sure that loan guarantee products are meeting their potential to help developers (for-profit and nonprofit alike) interested in revitalizing communities and increasing homeownership.

M. Remove blanket FHA single-family life-of-loan mortgage insurance premium

FHA borrowers with a less than 10 percent down payment must pay annual mortgage insurance premiums for the life of the loan. Under the 1999 Homeowners' Protection Act, private mortgage insurance cancels once a borrower reaches 78

⁶ According to 2013 American Community Survey 1-year public use microdata

percent loan to value (LTV), as there is sufficient equity in that home that even if the homeowner eventually defaults, the value of the home in combination with the premiums paid in advance will cover any losses. FHA and its borrowers would greatly benefit from eliminating the life of loan requirement. Cancellation of the premium would reduce the borrower's monthly payments, providing them with more cash on hand so they may better withstand economic shocks and thereby reduce defaults, which harm the strength of the Mutual Mortgage Insurance Fund (MMIF). In the interest of strengthening FHA's finances, NHC urges FHA to remove the life of loan annual mortgage insurance premium for all borrowers that reach 78 percent LTV, assuming the borrower has paid the annual mortgage insurance premiums for at least five years.

N. Allow Nonprofits to Receive Property Income Distributions like For-profits

HUD should repeal the existing regulatory ban on distributions to nonprofit owners of HUD-assisted properties (as set forth at 24 CFR Parts 880, 881, and 883). These regulations are not statutorily required, they arbitrarily disadvantage HUD's nonprofit partners relative to their for-profit peers, and they undermine nonprofit owners' capacity to advance HUD's aims. Unlike for-profits, nonprofits are required to reinvest any operating surplus to advance their charitable mission. Nonprofit owners typically rely on distributions of property cash flow to fund additional supportive services for residents; to support the operations of other less-viable affordable properties; or to fund new affordable housing development ventures. In recent years HUD has made some progress to correct this unbalanced treatment of distributions by modifying its Section 8 Renewal Guide to permit distributions to nonprofit-controlled owners in exchange for certain classes of long-term contract renewals, but current policy still prohibits distributions to nonprofit owners of original "new regulation" contracts, and to nonprofit owners who renew contracts under Option 4. If HUD chooses not to repeal the underlying regulations (cited above), it should amend the Renewal Guide to provide to nonprofit owners all distribution rights currently available to for-profit owners.

O. Clarify Policy on Emotional Support Animals in Multifamily Properties

FHEO Notice-2013-01 explains the obligations of housing providers with respect to animals that provide assistance to individuals with disabilities residing in their properties. The Notice is overly broad and should be clarified in some places. The Notice states that the housing provider "may ask persons who are seeking reasonable accommodation for an assistance animal that provides emotional support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one of more of the identified symptoms of effects an existing disability." The Notice does not require that the mental health professional has treated the individual in question. This should be clarified.

The Notice also states "While dogs are the most common type of assistance animal, other animals can also be assistance animals." Further in the Notice, it states "Breed, size and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct..." Managers of multifamily housing have to manage common spaces used by a variety of residents and thus have to balance different needs. The standard in this Notice puts too heavy a burden on the housing provider and can be abused. HUD should revise the Notice in light of the practicalities of managing apartments with many residents.

IV. Solicit more feedback as needed

Lastly, we recommend that HUD use this notice and comment period to surface opportunities for regulatory improvement and to solicit additional stakeholder input on specific areas the department hopes to improve. A single, brief comment period covering all of HUD's regulatory reach is simply too broad to expect all affected stakeholders to respond in all areas that might be affected. To avoid unintended negative consequences of regulatory change, we recommend that HUD use notice and comment for each regulation and major area of guidance it intends to change.



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To discuss any of these comments in further detail, please contact Rebekah King, Policy Associate, National Housing Conference, (202) 466-2121 x248, rking@nhc.org.

Sincerely,

A handwritten signature in black ink that reads "Chris Estes". The signature is written in a cursive, flowing style.

Chris Estes
President and CEO