September 9, 2014

Regulations Division, Office of General Counsel
451 7th Street SW., Room 10276
Department of Housing and Urban Development (HUD)
Washington, D.C. 20410-0500

Re: Docket No. FR-5578-P-01 - Streamlining Requirements Applicable to Formation of Consortia by Public Housing Agencies

To Whom It May Concern:

The National Association of Housing and Redevelopment Officials (NAHRO) is pleased to submit comments in response to the Department of Housing and Urban Development’s Proposed Streamlining Requirements Applicable to Formation of Consortia by Public Housing Agencies Rule. NAHRO represents more than 3,100 agencies and over 20,000 individual members and associates. Collectively, our membership manages over 970,000 public housing units, or approximately 83 percent of the entire inventory, as well as 1.7 million vouchers. Clearly our members have a vested interest in any effort to reduce the burdens placed on PHAs. NAHRO continues to work with the Department to identify and implement necessary reforms, and the enclosed comments to the proposed rule are intended in the spirit of our ongoing collaborations.

NAHRO is pleased that the Department continues to be interested in finding ways to reduce administrative requirements for PHAs. As federal appropriations for managing the Public Housing and Housing Choice Voucher program continue to fall short of need, PHAs have worked tirelessly to streamline and create efficiencies in their programs within the confines allowed under existing program regulations and HUD’s administrative systems. While these local efforts have aided PHAs to operate with fewer resources, additional administrative, regulatory, and statutory reforms are needed to reduce the requirements placed on PHAs. Creating additional opportunities for PHAs to work together and benefit from any resulting efficiencies is one important way in which the Department can create meaningful flexibility.

Given unprecedented shortfalls in both the Public Housing Operating Fund and Section 8 voucher program administrative fees, the need for meaningful intervention in the form of significantly reduced regulatory burden is arguably greater than it has ever been. To that end, we were encouraged by the commitments made by former Assistant Secretary Henriquez in letters to PHAs in which she...
pledged to develop “a list of legislative and regulatory actions that could be taken to help PHAs preserve their Public Housing operations” and to “take every step possible to mitigate the effects” of inadequate Section 8 administrative fee funding. Our members need HUD to follow through on those promises by finalizing and implementing reforms as soon as possible.

Scope
NAHRO is disappointed that the Department did not employ the full range of its statutory authority to include the Public Housing program in this proposed rule. By excluding it, the Department has erected a barrier to participation in the proposed flexibilities for PHAs that operate both a Public Housing and HCV program. For these PHAs, participating in a consortium for only one of their programs may create additional burdens sufficient to negate any of the potential benefits.

Voluntary Nature and Preferential Status
While the proposed rule would not require PHAs to enter into consortia, it is essential that NAHRO reiterate its position that consolidation, consortia, and other forms of shared service agreements and management contracts have the potential to be very useful tools. However, they are options that should only be exercised as a matter of local decision making, and should not be imposed by federal regulations.

NAHRO appreciates the voluntary nature of this proposed rulemaking and wishes to underscore the importance of not only making the decision to enter into a consortium voluntary, but also of ensuring that such entities are no more or less privileged than other arrangements. As part of its efforts to secure regulatory relief and flexibility for all PHAs, NAHRO encourages HUD to provide the greatest possible flexibility to single- and multiple-ACC consortia. To the extent that it is appropriate to remove or lessen any regulatory requirements while still complying with statutes, NAHRO also encourages the Department to consider whether such relief can also be provided to PHAs that elect to maintain independent operations. Additionally, it is essential that no PHAs that do not form consortia are not penalized, implicitly or explicitly, for this decision. No resources should be diverted from independent PHAs, nor should they be disadvantaged in any future competitions for additional federal resources as a result of their decision to remain independent.

Furthermore, PHAs should not be forced to enter into consortia agreements as a means of resolving other issues. In the past, PHAs have joined a consortium as part of a voluntary management improvement plan. However, neither the Department nor the courts should be empowered to compel a PHA to involuntarily enter into such an agreement.

HUD Approval
Under current regulations, formation of a consortium does not require HUD approval. While NAHRO recognizes that the language included in the FY 2014 Consolidated Appropriations Act amending the definition of a PHA did include the phrase “as approved by the Secretary,” we are concerned that this added requirement introduces undue uncertainty. NAHRO recommends that the Department include a safe harbor provision in the regulations to provide PHAs with firm guidance as to the threshold conditions necessary for approval of a consortium. Such a provision would also serve to prevent unrelated collateral policy initiatives from creating additional barriers to formation.
**Formation**
The proposed regulations would require PHAs to provide notice of their intent to form a consortium to HUD at least 120 days in advance and would require the consortium agreement to become effective on January 1. Withdrawals would be allowed only on the last day of the fiscal year, and additions would be allowed only on the first day of the fiscal year. NAHRO believes that this protracted and rigid timeframe is not only unnecessary, but also creates a substantial burden. PHAs may wish to enter into an agreement that aligns with their own fiscal year. Additionally, unforeseeable circumstances, such as a transition in leadership or an agency being cited for management deficiencies, may arise that would require a timely response. In such a situation, one potential course of action would be for the board to elect to join a consortium; clearly, timing would be of the essence, and the proposed rule would pose a substantial barrier.

**Consortium Terms**
NAHRO objects to the proposed rule’s requirement that a consortium exist for five years before any member agencies are allowed to exit. We see no reason why this requirement is necessary, and believe that it will have a chilling effect on local governments’ and PHA boards’ willingness to enter into such agreements. Several of the existing PHAs with whom NAHRO staff consulted in the development of this letter expressed doubts that local leadership would have been willing to consider a long-term commitment initially. It appears that the five-year requirement is intended to ensure that PHAs realize the value of their investment in the formation of a consortium. While there are certainly time and resources costs involved in the formation of a consortium, the Department’s efforts to protect PHAs from themselves are unnecessary and will instead serve as a disincentive to consortia formation. The proposed rule would allow for exit or dissolution for “good cause,” but this term is undefined. NAHRO believes that the responsibility to determine when there is good cause should be left to local PHA boards, not to HUD.

**Policies and Planning Requirements**
The terms of the proposed rule are unclear with respect to the planning requirements for multiple-ACC consortia. While NAHRO encourages the Department to allow for the submission of a single PHA plan and 5-Year Plan for each consortium, we are concerned that this would prevent multiple-ACC consortia from adopting varying policies among its membership. Each member PHA should retain the ability to adopt locally-determined waiting list preferences, flat rent schedules, community facility usage rules, etc. Multiple-ACC consortia should have the option to adopt uniform policies, but this should not be required.

**Audits**
NAHRO encourages the Department to pursue a single audit requirement, both for single- and multiple-ACC consortia. However, the formation of a consortium should not be grounds for increasing the burden of the audit requirements on the PHA. Small PHAs should continue to be treated as such and be subjected to audits that are reflective of the overall risk that they pose. Subjecting each small PHA to a full A-133 audit is extremely burdensome and carries a substantial additional cost.
Reporting
Single- and multiple-ACC consortia should enjoy the efficiencies of joint reporting. The Department may need to revamp the Financial Data Schedule in order to accommodate such reporting.

Dissolution and Withdrawal
NAHRO is concerned by the prescriptive nature of the proposed requirements around the distribution of resources at the time of dissolution. The participating PHAs in both single- and multiple-ACC consortia should be empowered to specify the process for dissolution or withdrawal, including the resource distribution, in their consortium agreement. This should be a matter of local governance and decision-making, and there is no compelling policy reason why the Department should regulate the terms of an agreement to which it is not a party.

Implicit Assumptions
The discussion accompanying the proposed rule repeatedly asserts that consortia result in increased efficiencies and effectiveness. While NAHRO does not question that this is sometimes the case, a PHA must also analyze a host of additional factors when considering the option of joining a consortium.

Alternatives
Given the jurisdictional limitations imposed by many state enabling statutes under which PHAs are formed, we believe that this rule will have very limited applicability. Because the rule would require PHAs to operate with a consolidated jurisdiction, it will simply not be an available option for most PHAs.

NAHRO encourages the Department to move expeditiously to implement the wide-ranging reforms that NAHRO and other industry groups have previously recommended. We look forward to continuing to work the Department towards our mutual goal of providing PHAs with the resources and flexibilities to meet the needs of their residents and communities.

Sincerely,

Tamar Greenspan
Director, Policy and Program Development