December 8, 2015

United States Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Dear Miguel Fontanez Sanchez:

On behalf of the National Association of Housing and Redevelopment Officials (“NAHRO”), I am writing regarding the Department’s erroneous interpretation of guidance governing the Housing Choice Voucher management fee. Formed in 1933, NAHRO represents over 20,000 individual and agency members. Collectively, our membership administers approximately 1.7 million Housing Choice Vouchers, and, as a result, we are dedicated to making sure that program regulations and concomitant guidance are interpreted correctly.

We are writing specifically about the proper interpretation of guidance regarding the appropriate amount that a Central Office Cost Center (“COCC”) may charge for the Housing Choice Voucher (“HCV”) management fee. Guidance provided by HUD states that “[f]or PHAs that elect to use a fee-for-service methodology for its HCV program, the Department will consider a management fee of up to 20 percent of the administrative fee.”

The guidance is ambiguous in that it does not clarify whether the term “administrative fee” refers to the administrative fee rate (i.e., the full eligibility of the administrative fee) or the prorated, distributed amount of the administrative fee.

When NAHRO members have questioned HUD field offices about this ambiguity, they have received the following response, which they have been instructed to use as a guide in determining the appropriate amount to charge:

[Percent] of Administrative Fee Method: When using the 20% of administrative fee method to determine an allowable management fee HUD’s guidance applies the 20% limitation to the administrative fee as stated in the handbook and not by applying the 20% limitation to the administrative fee rate [emphasis added]. Administrative fee is comprised of three general components: (1) fee rate, (both A and B rate), (2) vouchers leased and (3) appropriation level, commonly referred to as proration.

NAHRO has been unable to locate any statutory or regulatory basis for this “[Percent] of Administrative Fee Method.” In response, NAHRO staff have asked staff from HUD headquarters for an appropriate citation to guidance or regulation on which the “[Percent] of Administrative Fee Method” is based.

HUD staff responded by listing three citations, which they believed clarified that the term “administrative fee” meant the prorated, distributed amount of administrative fee and not the administrative fee rate. The first citation states that “[t]he PHA ongoing administrative fee is paid for each program unit under HAP contract on the first day of the month. The amount of the ongoing fee is determined by HUD in accordance with Section 8(q)(1) of the 1937 Act (42 U.S.C. 1437f(q)(1)) [emphasis added].” The second citation states that “[o]ngoing administrative fees and administrative fees for new vouchers will be paid based on leasing. These administrative fees will be calculated for CY 2014 as provided for by Section 8(q) of the United States Housing Act (and related Appropriation Act provisions) as in effect immediately before the enactment of the Quality Housing and Work Responsibility Act (QHWRA) of 1998 (Public Law 105-276). Under this calculation, PHAs will be paid a fee for each voucher that is under HAP contract as of the first day of each month. Administrative fee for new incremental vouchers will also be paid based on leasing [emphasis added].” The third citation states that “PHAs are paid an ‘administrative fee’ for operation of the HCV Programs. This administrative fee covers both direct costs, e.g. the salaries of the staff administering the HCV waiting list or conducting HCV unit inspections, and indirect costs, e.g. a portion of the executive director’s salary allocated to the HCV Program [emphasis added].”

In interpreting these citations, NAHRO staff were told that “the operative word here is ‘paid.’” The Department argues that that the term “administrative fee” in the phrase “the Department will consider a management fee of up to 20 percent of the administrative fee” is not ambiguous because in these citations, each source states that the administrative fee is paid. The implication is that “administrative fee” is the prorated, distributed amount because that is the amount that is “paid.” In a similar vein, according to HUD’s reasoning, this means the term “administrative fee” does not mean the administrative fee rate because that is not the amount “paid” to agencies for the last several years.

This is an erroneous interpretation of the regulations and guidance for several reasons. First, there is no statutory or regulatory definition of the term “administrative fee” that explicitly states that “administrative fee” refers to the prorated, distributed administrative fee amount and not the administrative fee rate. Second, the natural reading of the word “paid” indicates a transfer of the full amount of funds from one entity to another. It is not usually used to indicate partial amounts. For example, if a diner states that he or she paid a restaurant bill, then the assumption is that the diner paid the full amount of his or her bill. If a diner only paid a partial amount, then most

---

2 See 24 CFR § 982.152(b).
3 See Notice PIH 2014-5.
people would think the diner was being dishonest, if he or she claimed to have paid his or her bill. Applying this same natural reading to the above citations would illustrate that the paid “administrative fee” refers to the full eligibility amount of the administrative fee and not the prorated amount.

Third, in a letter to executive directors sent on October 14, 2015, with the subject line “CY 2015 Administrative Fee (Admin Fee) Pro-ration – Housing Choice Voucher (HCV) Program,” the Department writes that “[HUD] is well aware of the effects of the reduced administrative fee proration across the board for housing agencies administering the HCV program.” The term “administrative fee proration” is used in the prior sentence. If the term “administrative fee” referred to the prorated amount, then the term “administrative fee proration” would be redundant. Thus the term “administrative fee” must refer to the administrative fee rate. According to HUD’s own correspondence, the plain meaning of the term “administrative fee” is the administrative fee rate.

Fourth, even if we accept HUD’s explanation from its citations that coupling the word “paid” with the term “administrative fee” refers to the prorated, distributed amount of administrative fees, then it follows that the “administrative fee” term specified in the phrase “the Department will consider a management fee of up to 20 percent of the administrative fee” must be referring to the administrative fee rate. If it were referring to the prorated distributed amount of administrative fees, then—according to HUD’s reasoning—the phrase would read “the Department will consider a management fee of up to 20 percent of the paid administrative fee.” As the guidance excludes the word “paid” applying HUD’s interpretation still leads to the conclusion that the term “administrative fee” refers to the administrative fee rate.

For these reasons, NAHRO believes that HUD should interpret their guidance such that the term “administrative fee” means the administrative fee rate and not the prorated, distributed amount of the administrative fee. A plain meaning common-sense interpretation without resorting to verbal acrobatics would ensure compliance and good-will from all of HUD’s stakeholders.

Thank you for the opportunity to present NAHRO’s views. We greatly appreciate it.

Sincerely,

Policy Analyst, Section 8 Programs

CC:
Principal Deputy Assistant Secretary for Public and Indian Housing Lourdes Castro Ramirez