November 18, 2019

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-6057-P-01] Housing Opportunity Through Modernization Act of 2016:
Implementation of Sections 102, 103, and 104

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I 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 titled “Housing Opportunity Through Modernization Act of 2016: Implementation of Sections 102, 103, and 104” published in the Federal Register on Tuesday, September 17, 2019.

Formed in 1933, NAHRO represents over 20,000 housing and community development individuals and agencies. Collectively, our members manage over 270,000 public housing units, 1.7 million Housing Choice Vouchers (HCVs), and receive over $1.5 billion in Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funding to use in their communities. The National Association of Housing and Redevelopment Officials has the unique ability to represent public housing agencies, local redevelopment agencies, and other HUD grantees of all sizes and geography.

This letter is divided into two sections. The first section provides NAHRO’s comments on the proper implementation of sections 102, 103, and 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA). The second section responds to HUD’s particular solicitations of comments.

Section I

Implementation Should Prioritize Less Administrative Burden

When deciding between competing priorities in how to implement regulations, HUD should choose the implementation alternative that most reduces administrative burden. One of the principal intents of HOTMA is to streamline cumbersome processes and make it easier for program administrators to efficiently operate their programs. This greater efficiency allows for program administrators to focus less time on administrative tasks and more time on ensuring optimal outcomes for their program participants. While NAHRO understands that sometimes the Department must choose between competing priorities in how to implement certain provisions, we believe that prioritizing a reduction in administrative burden is the best option from a policy perspective and the best option in correctly following the intent of the statute.
In addition to the benefits of HOTMA streamlining, true streamlining will require a national conversation on options for rent reform, and the ability to customize the programs to meet local needs.

**Implementation Requires Additional Funding**

As with any large regulatory change, implementing this rule will be costly. The Department can make sure that housing authorities are not impacted negatively by the costs of implementation by providing additional funding. In the Housing Choice Voucher program, it has been 16 years since the administrative fee has been fully funded and the operating fund for Public Housing last received full funding in 2010 because of the American Recovery and Reinvestment Act of 2009. Meeting the basic funding eligibility requirements for these programs ensures that funding is not being diverted from assisting program participants to meet these regulatory requirements.

**Implementation Timeline of 2 Years**

After speaking to our members, and aware of software and other technical changes that will need to be made to implement the changes in the proposed rule, NAHRO believes that HUD should create an effective date of up to 2 years to enforce the provisions of this rule. At the same time, agencies that wish to enforce certain or all provisions of this rule earlier (e.g., the earned income disregard phase-out) must be allowed to do so.

**Section II**

This section responds to the Department’s specific solicitations for comment.

1. **What administrative burdens or other considerations (particularly related to Rental Assistance Demonstration conversions) should HUD be aware of in relation to certain sections applying to public housing and the HCV and project-based (PBV) programs, but not to project-based rental assistance (PBRA) and Section 202/811?**

   While we do not have specific suggestions for each program listed, we encourage HUD to ensure that all the programs follow the same rules and requirements to the greatest extent possible. Having very similar or the same requirements will greatly reduce costs in training and result in fewer errors being made while administering these programs. Program uniformity would especially help in the administration of post-RAD conversion developments, where similar requirements will streamline regulatory burden.

2. **HUD is specifically seeking comment about the “reasonable period of time” in which the PHA and owner must conduct an interim reexamination. HUD seeks comment on what should be considered reasonable and whether this rule should contain a specific time frame by which the PHA or owner must complete an interim reexamination. HUD seeks comment on what such a time frame might be (for example, 2 weeks from the time of the family request, or the time the PHA or owner is aware of the change in income or family composition).**

   The National Association of Housing and Redevelopment Officials believes that PHAs should have the discretion to set what should be considered a “reasonable period of time.” If the ability to set a “reasonable period of time” is not included in the rule, then the next best alternative is to leave “reasonable period of time” term undefined.
If this is not possible, then the appropriate “reasonable period of time” should be 90 days. It may take this amount of time to receive all of the required documentation and frequently there is a degree of error correction involved in the back and forth of finding the appropriate documentation. This allows a sufficient amount of time to conduct an interim reexamination. Additionally, this period of time will lead to fewer interim reexaminations that only deal with job changes (i.e., if income declines and then increases again with no or little net change).

If HUD insists on a time period that is less than 90 days, then HUD should structure the period such that it starts not when the family requests reexamination, but when the PHA receives all required documentation to process the interim.

3. HUD is seeking comments on whether HUD should continue to require PHAs and owners to use the Enterprise Income Verification (EIV) System for every income examination, or revise its regulations at 24 CFR 5.233 to require use of EIV only at initial and annual reexaminations and not at interim reexaminations. If HUD were to adopt such a proposal, housing providers could still use EIV for interim reexaminations but would not be required to use EIV. HUD is seeking comments on whether such a proposal would save time for PHAs and owners without significantly impacting the accuracy of reexaminations.

Using the Enterprise Income Verification (EIV) system should not be required for every income examination. We believe that HUD’s proposal to require use at initial and annual reexaminations, but make use of EIV at interim reexaminations voluntary to be the ideal solution.

4. HUD is soliciting feedback on how allowing PHAs and owners to use income determinations from other forms of public assistance may impact program administration, and whether HUD should establish requirements as to which income determination should be used if there is more than one determination of income from other public assistance programs available to the PHA or owner.

Public Housing Authorities should have the ability to pick how they would like to use income determinations from other forms of public assistance. The Department should not establish requirements as to which income determination should be used if there is more than one determination of income from other public assistance programs available to the PHA or owner. Local agencies will have a better understanding of the accuracy of different program administrators and may have better information sharing relationships with certain ones. It will vary by state and by place.

5. HUD is soliciting feedback on whether there are other forms of Federal public assistance that should be added to the “safe harbor” list or whether HUD should limit the number of such programs.

The Low-Income Tax Credit should be added to the forms of Federal public assistance that should be added to the “safe harbor” list. Additionally, a provision should be added so that PHAs may submit other income determination methods from other federal public assistance, which may be approved by HUD. This will ensure that this provision remains applicable to new or changed determinations from other forms of public determination in the future.
6. HUD specifically seeks comment from PHAs and owners on the methodology HUD should use in determining what constitutes a de minimis error. For example, as alternatives to the 5 percent figure discussed above, HUD could calculate de minimis errors to be those that do not exceed $30 per month for any family, because a family's share of rent for 1937 Act programs is approximately $30 for every $100 of income. Or, HUD could calculate de minimis errors as those that represent less than 5 percent of all income determinations made during a calendar year.

After speaking with our members, NAHRO believes that the best solution here is using an agency-wide de minis calculation of 5 percent. This will be much easier to implement than de minimis calculations done by household.

If HUD decides not to create an agency-wide calculation, then NAHRO believes that de minimis errors should be those errors which are less than the greater of $50 dollars per month per household or 5 percent per month per household. We believe that this is an appropriate standard to use because it balances the ease of using a dollar amount with the flexibility of using a percentage.

If HUD insists on either using a dollar amount or a percentage exclusively for household calculations then, HUD should use the dollar amount of $50. If HUD insists on using a percentage, then the five percent number should be used because it is a percentage that is used by HUD in other programs.

7. HUD specifically solicits comment on this proposal to allow current recipients of the EID benefit to continue to receive the benefit until the allowed time frame expires.

Current recipients should be allowed to use the Earned Income Disallowance while it is being phased-out. This will ensure that the rules are not changed for those recipients while they are using it, which would be unfair.

8. HUD is seeking feedback from interested parties on the impact of the proposed redefinition of annual income and whether it simplifies the understanding of what is included in annual income.

It is arguable whether the new definition of annual income simplifies the understanding of income. Since the removal of the examples in the current 24 CFR 5.609(b) will not substantively change the other components of the regulation, NAHRO does not object to it.

9. HUD solicits comment on what inflationary index to use for purposes of adjusting the amount of imputed return on assets included in annual income, and other provisions in HOTMA that require amounts to be adjusted annually for inflation.

The National Association of Housing and Redevelopment Officials believes that HUD should use the Consumer Price Index (or consult with the Departments of Treasury or Commerce to find a more appropriate index). In making annual adjustments, the Department should round down figures to the nearest $1000 for assets and nearest $50 for income to ensure that there are simple round numbers that will be easy to calculate. Absent this rounding, all the numbers tied to an inflationary index will be harder to work with. This will greatly reduce administrative burden.
10. The proposed rule provides that distributions from a nonrevocable trust fund specifically provided to cover the cost of medical expenses for a minor is excluded income, as are any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty, owed to a family member arising out of law, that resulted in a member of the family being disabled. Distributions from a non-revocable trust fund provided for other purposes would be considered income. HUD is seeking comment on whether this rule should treat subsequent withdrawals of an insurance payment or settlement for personal or property losses (whether related to a minor or not), or amounts recovered in the aforementioned civil action or settlement, as income. For example, while the initial lump sum addition of an insurance payment or an amount recovered in the civil action or settlement would not count as annual income, HUD seeks comment on whether this rule should specify that any amount the family subsequently withdraws against the payment (e.g., from a bank account or trust fund into which the insurance payment or recovered amount was deposited) would be considered income. If this rule were to consider such subsequent withdrawals as income, HUD seeks comment on whether certain types of withdrawals should be excluded from annual income (in addition to the existing exclusion of distributions from a non-revocable trust fund specifically provided to cover the medical expenses of a minor). If the rule were to consider such subsequent withdrawals as income but exclude certain withdrawals that are used for a particular purpose (e.g., the family received an auto insurance payment after an accident that totaled the family car that the family deposited in their checking account and then subsequently used to purchase a replacement vehicle), HUD seeks comment on whether there are specific requirements that could be added to address the operational challenges that a PHA or owner would face in identifying, determining, and verifying that the withdrawal should be either included or excluded from annual income. Finally, HUD is requesting comment on whether the final rule should simply count the lump-sum insurance payment or settlement as income, rather than excluding it from annual income at any point in time.

The Department should exclude lump-sum insurance payments or settlements from annual income. Additionally, the Department should not treat subsequent withdrawals of an insurance payment or settlement for personal or property losses (whether related to a minor or not) or amounts received in a civil action of settlement as income. This is especially true if the Department intends to include some withdrawals as income while excluding other withdrawals as income. It would be impossible for a PHA to accurately gauge which payments to include and which payments to exclude and would create administrative burden with no particular benefit. It would be simpler to exclude all subsequent withdrawals or amounts received from these payments or settlements.

Again, excluding these subsequent withdrawals from lump-sum insurance payments or settlements from annual income would significantly lower administrative burdens. It is not feasible to treat these withdrawals as income.

11. HUD is soliciting feedback about whether there are other income exclusions that should be provided for in this rulemaking. For example, deferred disability benefits are excluded from income under HOTMA and this proposed rule, but the rule could provide for exclusions from income for all veteran's disability benefits.

The Department should include temporary, nonrecurring, or sporadic income (including gifts) as an income exclusion. Eliminating this exclusion would create significant administrative burdens as PHAs strive to document these highly irregular payments.

If the Department does not include the temporary, nonrecurring, or sporadic income (including gifts) income exclusion, then the Department should create an exclusion for income derived from Census employment (currently census employment income is excluded as type of temporary employment payment; see PIH 2017-05 titled “Income exclusion under temporary Census employment and Census access”).
12. HUD is soliciting feedback from affected parties on the proposed implementation of the hardship exemption for both the health and medical expenses deduction and child care deduction. Specifically, HUD is soliciting comments on whether there are better approaches to implementing the hardship exemptions than what is proposed in this rule, whether HUD should establish specific requirements or parameters as to how the PHA or owner would determine that the family is unable to pay the rent (for example, the percentage of the family's income paid for rent and health and medical expenses exceeds a certain percentage), or whether PHAs and owners should be given broad administrative discretion to establish their own policies on how to make this determination.

The Housing Opportunity Through Modernization Act of 2016 directs HUD to create exemptions for families that cannot afford their rent despite deducting health and medical expenses greater than ten percent of their income. The hardship exemption, as structured in the proposed rule, would allow families to deduct expenses over 6.5 percent, instead of ten percent. The Department’s rationale for the 6.5 percent number is that it is half-way between the old deduction of three percent and the new deduction of ten percent.

The National Association of Housing and Redevelopment Officials does not think that this is a good justification. There is no rationale for the exemption to be a number between the old deduction and the new deduction. Ideally, the PHA should be given broad discretion about how to structure the exemption for the deduction. The statute requires that an exemption be given, so the exemption should be mandatory, but at what level the exemption should be set should be determined by the PHA. The exemption need only be set at a lower level than regular deduction level of ten percent.

If the exemption level is not set by the PHA, then the exemption should allow families to deduct their full health and medical expenses from their income. This appropriately captures the meaning of the HOTMA statutory text. If that is not possible, then a second alternative would be for the deduction to be set at the old amount of three percent. Thus, if families were unable to afford their rent, despite being able to deduct expenses over ten percent of their income from their income, then with the hardship exemption, they should be able to deduct expenses over three percent of their income.

The hardship exemption for the child-care deduction is appropriately structured.

The National Association of Housing and Redevelopment Officials does not object to the structure of the time limitations for either hardship exemption as designed by the Department.

13. HUD is soliciting feedback on whether the proposed implementation of permissive deductions (i.e., that a PHA will not be eligible for additional subsidy to cover the costs associated with the deduction) has any unintended consequences, or whether HUD should define “material” differently. Further, HUD is soliciting feedback on whether the permissive deductions could be used to provide incentives for employment. For example, HUD could permit PHAs to be eligible for additional subsidy for certain permissive deductions of earned income (e.g., permissive deductions of the first $1,000 or $5,000 of earned income) or other work-related income.

The Housing Opportunity Through Modernization Act of 2016 directs HUD to ensure that permissive deductions do not materially increase federal expenditures. The Department should define materially as a five percent increase. An increase of five percent or less clearly should not constitute a material increase because there are many other provisions where HUD uses this percentage as the threshold for a de minimis change. This would use a number that is already used frequently in other HUD regulations and guidance as a good threshold (e.g., see five percent de minimis unit loss in Rental Assistance Demonstration conversions).
The National Association of Housing and Redevelopment Officials is open to the possibility that HUD could subsidize permissive deductions that can be used to provide incentives for employment. We would support subsidizing this type of permissive deduction assuming that the PHA would have the sole discretion on whether to implement it.

14. HUD is soliciting comment about the circumstances under which a family may not have a present ownership interest in, legal right to reside in, or effective legal authority to sell real property in the jurisdiction in which the property is located, and the feasibility of families demonstrating this.

At this time NAHRO is not aware of any scenarios where a program participant should have his, her, or their real property included as an asset, but he, she, or they do not have a present ownership in, legal right to reside in, or effective legal authority to sell the real property in the jurisdiction in which the property is located.

After checking with our membership, we did investigate scenarios where the property should not be included in assets and checked to see whether the proposed rule allowed for the property to be excluded in those scenarios.

Inherited Farmland – In this scenario, parents leave farmland to children and the children have a joint interest in the property. The proposed provision at 24 CFR 5.618(a)(1)(ii)(B), stating that property jointly owned by a member of the family and another individual that does not reside with the family may be excluded, would ensure that this property is excluded from the asset limitation.

Separated Couple – In this scenario, a couple is separated or divorced and have a common interest in a house. The proposed provision at 24 CFR 5.618(a)(1)(ii)(B), stating that property jointly owned by a member of the family and another individual that does not reside with the family may be excluded, would ensure that this property is excluded from the asset limitation.

Unsuitable Home – In this scenario, a home is not suitable because an individual has physical limitations that make the home unacceptable. The proposed provision at 24 CFR 5.618(a)(2)(i), stating that homes that don’t meet the disability related needs of the family may be excluded, ensures that that this property is excluded from the asset limitation.

Litigation – In this scenario, property is “tied up” in litigation. The proposed rule may not offer a way to exclude this property from the asset limitation (whether the program participant has a present ownership interest may vary by jurisdiction), other than the selective enforcement provision of the proposed provision at 24 CFR 5.618(c)(1).

Probate property – In this scenario, property is in a state’s probate process. The proposed provision at 24 CFR 5.618(a)(1)(ii), stating that the family must have a present ownership interest in the property to be included in the property to be listed as an asset, would seem to indicate that the real property would be excluded because the program participant would not have an ownership interest in the property, but this may vary by jurisdiction.

School – In this scenario, a program participant is living and attending school in a jurisdiction separate from the jurisdiction where the property is located (the commute would be too long to live in the real property), but the program participant cannot sell the property because of an “underwater mortgage.” As NAHRO reads the rule, the property would be excluded from listing as it would not be suitable for occupancy because it is geographically located so as to provide a hardship for the family under the proposed provision at 24 CFR 5.618(a)(2)(iii).

We encourage HUD to think through how these scenarios—and others—would play out in different jurisdictions across the country to see whether additional exceptions to the asset-based restrictions are required.
15. HUD is soliciting feedback from the public on how the exemption for victims of domestic violence, dating violence, sexual assault, or stalking will be implemented and how it will operate.

At this time, NAHRO does not have suggestions for how to incorporate violence against women act provisions into this regulation, but we encourage HUD to issue another rulemaking notice for these provisions, when it has solid proposed language. Additionally, it may be worth promulgating regulations for these provisions after the reauthorization of the Violence Against Women Act is passed to avoid having to change the regulations in the near future again.

16. HUD specifically seeks comment on the proposal to exclude items of personal property valued $50,000 or less, other than necessary items, from the calculation of net family assets, and comments on what such necessary items of personal property might be. Examples might include a car that the family relies on for transportation, or medical equipment.

The National Association of Housing and Redevelopment Officials strongly supports the Department’s proposal to exclude all items of personal property under $50,000.

Additionally, HUD should exclude necessary items of personal property (irrespective of the worth of those items). Instead of seeking to compile a list of necessary items and incorporate them into the regulation, the Department should use the term “necessary item” and then provide a non-inclusive list of examples (i.e., a list of examples that is not exhaustive). Finally, if HUD does compile a list of “necessary items,” it should include all medical equipment (not just necessary medical equipment), items used for education, and other items used for business or work purposes.

17. HUD is seeking feedback from interested parties on whether HUD should adopt all revisions made to adjusted income (mandatory deductions, additional deduction and hardship exemptions, as applicable) when combining HOME and other federal programs such as Section 8 in a rental project.

The National Association of Housing and Redevelopment Officials recommends that HUD adopt all revisions made to adjusted income when combining HOME and other federal programs. This ensures that agencies with both standalone Section 8 or public housing programs as well as programs that are combined with HOME funds are streamlined and consistent. Bifurcating adjusted income would add administrative burden and confusion to PHAs that manage both programs.

18. HUD is seeking feedback from interested parties on whether HUD should adopt financial hardship exemptions for families receiving HOME-funded tenant-based rental assistance.

Yes, HUD should adopt financial hardship exemptions from families receiving HOME-funded tenant-based rental assistance. The same rationale for applying them to the Housing Choice Voucher program and Section 8 project-based rental assistance applies to the HOME tenant-based rental assistance.

Before implementing them, HUD should promulgate rules through the appropriate administrative procedures act process to ensure that all interested stakeholders have the opportunity to comment on the HOME rules.
19. In light of revisions made to 24 CFR 5.609(c)(3) to allow PHAs to accept a timely income determination of a family from another agency's means-tested Federal public assistance, HUD is seeking feedback from interested parties on whether 24 CFR 92.203(a)(1)(iii) should specify what HUD considers timely for purposes of accepting an income determination of a family made by an administrator of a government program under which the family receives benefits.

The National Association of Housing and Redevelopment Officials recommends that HUD consider any income determination for the HOME program that comes from another agency’s means-tested Federal public assistance within the last twelve months as timely. This will ensure consistency across HUD programs, including HUD’s proposed definition of “timely” for the Housing Choice Voucher and Public Housing programs.

20. HUD is seeking feedback from interested parties on whether HUD should adopt asset restrictions for any housing programs funded with HOME (e.g., homebuyer, rental, tenant-based rental assistance and owner-occupied rehabilitation), as well as when housing programs funded with HOME are combined with other federal programs such as Section 8.

The National Association of Housing and Redevelopment Officials recommends that HUD adopt the same language for asset restrictions for any housing program funded with HOME as well as housing programs funded with HOME and combined with other federal programs such as Section 8. This will ensure consistency and clarity to agencies that have standalone Section 8 and public housing programs as well as programs combined with HOME funds. Adopting consistent restrictions will reduce administrative burden and confusion to PHAs that manage both programs.

Agencies that have housing programs funded with HOME and housing programs that are funded with HOME and combined with other federal programs should be allowed to not enforce asset limitations, if they so choose, provided that the PHA or owner sets forth a policy to that effect in its PHA plan or in a plan adopted by the owner. This will again ensure consistency between programs, as HOTMA allows PHAs not to ensure asset limitations if they so choose.

21. In light of revisions made to 24 CFR 5.609(c)(3) to allow PHAs to accept a timely income determination of a family from another agency's means-tested Federal public assistance, HUD is seeking feedback from interested parties on whether 24 CFR 93.151(d) should specify what HUD considers timely for purposes of accepting an income determination of a family made by an administrator of a government program under which the family receives benefits.

The National Association of Housing and Redevelopment Officials recommends that HUD consider any income determination for the Housing Trust Fund that comes from another agency’s means-tested Federal public assistance within the last twelve years as timely. This will ensure consistency across HUD programs, including HUD’s proposed definition of “timely” for the Housing Choice Voucher and Public Housing programs.
The National Association of Housing and Redevelopment Officials thanks the Department for the opportunity to comment on these provisions. If you have any additional questions or would like to discuss the details of this letter in further detail, please contact Tushar Gurjal at tgurjal@nahro.org or Eric Oberdorfer at eoberdorfer@nahro.org.

Sincerely,

Tushar Gurjal,  
Policy Analyst

Eric Oberdorfer,  
Policy Advisor