March 20, 2017

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

Re: [Docket No. FR-5976-N-03] Housing Opportunity Through Modernization Act of 2016:
Implementation of Various Section 8 Voucher Provisions

To Whom It May Concern:

On behalf of our agency members—who manage over 970,000 units of Public Housing and 1.7 million Housing Choice Vouchers—and the more than 20,000 individual members that make up the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments in response to the notice titled “Housing Opportunity Through Modernization Act of 2016: Implementation of Various Section 8 Voucher Provisions” published in the Federal Register on January 18, 2017.

NAHRO would like to thank the Department of Housing and Urban Development (HUD or the Department) for the opportunity to comment on these provisions implementing certain Section 8 provisions of the Housing Opportunity Through Modernization Act of 2016 (HOTMA). NAHRO hopes that HUD considers NAHRO’s responses to HUD’s prompts as HUD moves forward implementing these provisions.

This comment letter mirrors the structure of HUD’s notice and is divided into three sections (NAHRO offers no comment on the fourth section of the notice titled “Using Vouchers in Manufactured Housing”). The three sections are titled “Inspections of Dwelling Units,” “Units Owned by a PHA,” and “Project-based Vouchers.” Each of these sections is further divided, once again mimicking the structure of HUD’s notice.

[Signatures]
1. Inspections of Dwelling Units

   a. Occupancy Prior to Meeting HQS

Is HUD’s definition of non-life-threatening conditions as any condition that does not meet HUD’s definition of life-threatening appropriate? If not, is there an alternate definition HUD should use?

HUD’s definition of non-life-threatening conditions as “any condition that does not meet HUD’s definition of life-threatening” is appropriate. NAHRO does not have an alternative definition of non-life-threatening to suggest.

HUD’s list of life-threatening conditions is based on the definition currently being used by the UPCS-V demonstration. Are there other sources that HUD should consider for this list?

While NAHRO does not have additional sources to suggest for this list, NAHRO believes that the current list should be altered so that item four, labeled “Interior air quality,” has its standard changed from requiring functional carbon monoxide detectors to the current Housing Quality Standard in use. That standard is reproduced below:

“Interior air quality—(1) Performance requirement. The dwelling unit must be free of pollutants in the air at levels that threaten the health of the occupants.

(2) Acceptability criteria. (i) The dwelling unit must be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful pollutants.

(ii) There must be adequate air circulation in the dwelling unit.

(iii) Bathroom areas must have one openable window or other adequate exhaust ventilation.”

There are two reasons why this standard currently in use makes sense. First, it allows PHAs the flexibility to decide how best to meet the interior air quality criterion. The result from the perspective of the tenant remains the same, but PHAs are best-positioned to determine how to measure whether the standard is met. Second, the current list is taken from the UPCS-V standard, which has only begun being tested at a handful of PHAs and may not be ready to be implemented nationally.

Alternatively, HUD may decide to delay the implementation of item four until 2019, while making sure that PHAs are aware of the requirement between now and then.

Is establishing 180 days as the maximum time the PHA may withhold or abate payments before terminating the HAP contract for the owner’s failure to make the repairs the appropriate timeframe? Should this time period be shorter or longer?

While NAHRO believes that 180 days is an appropriate time period for a PHA to withhold or abate payments, NAHRO supports giving PHAs flexibility in either lengthening or shortening the maximum time according to an individual PHA’s needs. Some of our membership has concerns that some landlords may deliberately wait until the end of 180 days to fix something that could be fixed earlier, depriving a

1 24 CFR § 982.401(h).
program participant of the full benefit of the program in the interim and would support the ability to change the time period depending on the needs of the community. The PHA designated time period can be set in a PHA’s administrative plan.

How should HUD modify SEMAP Indicator 11 for PHAs that elect to implement §8(o)(A)(ii)?

At this time, HUD should allocate the SEMAP Indicator 11 points to those PHAs that wish to implement these provisions, instead of increasing the current complexity of SEMAP. A more thoughtful indicator can later be instituted as part of any comprehensive reform to SEMAP that HUD may be planning.

Are there any other discretionary factors that PHAs should consider in implementing §8(o)(A)(ii)?

At this time, NAHRO has not identified other discretionary factors that should be considered.

b. Alternative Inspections

How should HUD modify SEMAP Indicator 11 for PHAs that elect to implement §8(o)(A)(iii)?

At this time, HUD should allocate the SEMAP Indicator 11 points to those PHAs that wish to implement these provisions, instead of increasing the current complexity of SEMAP. A more thoughtful indicator can later be instituted as part of any comprehensive reform to SEMAP that HUD may be planning.

2. Units Owned by a PHA

a. Units Owned by a PHA

Should the definition of “controlling interest” be different?

At this time, NAHRO has no suggestion for the definition of “controlling interest.”

Are there programmatic issues with changing a unit’s designation from PHA-owned to not PHA-owned that need to be addressed by HUD?

At this time, NAHRO is not aware of programmatic issues that may arise from a removal of a PHA-owned designation from a unit.

What, if any, additional oversight and monitoring should HUD undertake for units in which the PHA has ownership interest in order to ensure that all program requirements (including rent reasonableness and housing quality standards) are being met, especially in cases where the PHA responsible for enforcing those standards has a financial interest in the project?

The current regulations requiring an independent entity to perform certain PHA functions for “PHA-owned housing” are sufficient to ensure that all program requirements are being met for units that are “owned by a public housing agency” as defined in this notice. ² If a PHA has an ownership interest, but does not fall under the “owned by a public housing agency” definition, no additional oversight or monitoring requirements should be imposed. One of the rationales for having an “owned by a public housing agency” definition is to limit the scope of when it is necessary to have additional oversight. If

² See 24 § CFR 982.352(a)(iv).
Congress had thought it necessary for additional oversight, it would have amended the definition of “owned by a public housing agency” to specifically include an “ownership interest.”

3. Project-Based Vouchers

a. Changing the Maximum Amount of PBVs Permitted in the PHA HCV Program (§8(o)(13)(B) of 1937 Act)?

Should HUD allow PHAs that are administering PBV units that would qualify under the additional 10 percent exception categories but were placed under HAP contract prior to the effective date of this notice count those units as excepted?

Yes, HUD should allow PHAs that are administering PBV units that would qualify under the additional ten percent exception categories, but were placed under HAP contract prior to the effective date of this notice, as excepted. This would further the goals of HOTMA which encourages PHAs to project-base vouchers that fall under these categories.

The new (o)(13)(B) further provides that the additional 10 percent exception may be applied to units that are difficult to use, as determined by the Secretary, and with respect to census tracts with a poverty rate of 20 percent or less. What criteria should HUD use to define or determine the areas where vouchers are “difficult to use” for this exception category?

HUD should allow PHAs the ability to define “difficult to use” in their administrative plan. Alternatively, HUD should create a process where PHAs can submit proposals for what constitutes “difficult to use” outside of the statutory exception and any list of definitions that HUD may institute. This way, PHAs can create solutions to the myriad of underlying causes that may make a voucher difficult to use.

The statute allows the Secretary to issue regulations to create additional exception categories from the normally applicable PBV program limit, which could apply to the additional 10 percent authority or that could be exempted from the program limit entirely. What additional exception categories that should be included in the 10 percent authority? What other types of units should be exempted from the PBV program limit entirely?

Similar to the answer stated above, HUD should allow PHAs the ability to define the additional exception categories in their administrative plan. Alternatively, HUD should create a process where PHAs can submit proposals for additional exception categories (both exemptions for an additional ten percent PBV authority and exemptions from any PBV cap) outside any list of definitions that HUD may institute. This allows for maximum flexibility for any alternative ideas that a PHA may think of that works well for its community.

Other categories that HUD may want to think about may include units that are in areas that have access to proficient schools, areas where there may be greater opportunities for employment, areas that have better access to transportation hubs, or areas that have environmentally healthy neighborhoods. By allowing a greater percentage of vouchers to be project-based in these areas, HUD will allow PHAs to minimize disparities in access to opportunities. HUD should provide a toolbox of exceptions, and the ability to request new exceptions, so that PHAs can use the appropriate tools for their communities.
This document sets out certain conditions that a PBV new construction unit must meet in order to be considered replacement housing and eligible for the exception to the PHA PBV program limitation. Are those conditions appropriate or should they be changed or expanded?

Under paragraph (b) of the heading “PBV New Construction Units that Qualify for the Exception as Replacement Housing,” the newly constructed units should not have to be on the same site as the unit it is replacing.

In light of the impact that additional exceptions and exemptions from the program limit will have on the number of vouchers available for tenant-based assistance under the HCV program, should HUD establish additional categories at all? What limits or requirements on project-basing, if any, should be placed on the use of this exception authority to ensure that the PHA has sufficient tenant-based assistance available for families to exercise their statutory right to move from the PBV project with tenant-based assistance after one year of occupancy at the PBV project?

HUD should establish additional categories where PHAs can project-base additional vouchers. To the extent that HUD would like to incentivize program participants living in certain areas (e.g., census tracts with a poverty rate of 20 percent or less), allowing PHAs to project-base more units in those areas will most likely result in more program participants living in those areas. HUD is correct that with some of these policies and other policies that HUD has promulgated (e.g., Small Area FMRs), HUD will reduce program participant choice by structuring regulations in a way to produce outcomes that HUD views as favorable on a macro level. Given that HUD has the ability to choose the appropriate categories for exceptions, there should be no limits on the use of those exceptions, since HUD has already approved them.

b. Changes to Income-Mixing Requirements for a Project (Project Cap) (§8(o)(13)(D) of 1937 Act)?

What other standards should HUD require for supportive services under B.2 above?

No other standards should be required.

The Secretary has authority to define areas where tenant-based vouchers are “difficult to use.” What are some other criteria that HUD should include?

Similar to the answer stated above, HUD should allow PHAs the ability to define the additional exception categories in their administrative plan. Alternatively, HUD should create a process where PHAs can submit proposals for additional exception categories outside any list of definitions that HUD may institute. This allows for maximum flexibility for any alternative ideas that a PHA may think of that work well for its community.

Are there additional properties formerly subject to federal rent restrictions or receiving rental assistance from HUD that should be exempted from a project cap?

Projects funded by the HOME Investment Partnerships Program and the Low-Income Housing Tax Credit (LIHTC) Program should be exempted.
The statute allows HUD to impose additional monitoring and requirements on projects that project-base assistance for more than 40 percent of the units. How can PHAs ensure that this increase in PBV units will not hamper mobility efforts and moves to opportunity areas?

PHAs should educate program participants of their rights under the Housing Choice Voucher Program.

c. **PBV Contract Terms (§8(o)(13)(F) and (G) of 1937 Act and §§ 106(a)(4) and (5) of HOTMA)**

Are there additional parameters HUD should consider placing on PHAs and owners when amending HAP contract terms related to continuation, termination or expiration?

No additional parameters should be placed on owners or PHAs when amending HAP contract terms related to continuation, termination, or expiration.

d. **Attaching PBVs to Structures Owned by PHAs (§8(o)(13)(N) of 1937 Act)**

Is the $25,000 per unit threshold appropriate for this exception from the competitive process? HUD is seeking public comment on other possible dollar thresholds or methodologies for determining whether a PHA’s rehabilitation or construction projects qualifies as an initiative to improve, develop, or replace a public housing property or site.

At this time, NAHRO does not object to the $25,000 per unit threshold, but would like additional explanation on the methodology used to come to that figure. NAHRO also recommends looking into scenarios where it might make sense to lower the threshold (e.g., if the PHA is serving a special population).

The law provides that this section is applicable to a PHA that has an ownership interest in or has control of the project. Are there examples or cases where a PHA may have control of a project but would not have any ownership interest in the project that HUD should address in future implementing guidance or when conforming the regulation to these provisions?

According to our membership, HUD should consider long-term management of the projects by the PHAs or when the PHA master leases a project under a long term master lease.

e. **Project-Basing Special-Purpose Vouchers (§8(o)(13)(O) of 1937 Act)**

Is there an advantage to grouping FUP families (either FUP families, FUP youth, or all FUP families) in one project (as opposed to interspersed with other PBV units in a PHA’s portfolio)?

Grouping FUP families together allows for easier delivery of services. PHAs should have the discretion to group these vouchers how they feel would be most appropriate given their portfolio and the needs of the communities that they serve.

How would the PHA administer waitlists and preferences to manage FUP availability across multiple waitlists?

Some members have suggested that PHAs should use site-based waitlists to manage FUP vouchers. Others have suggested a separate waitlist for FUP to which program participants could apply, which
could prevent the problem of a family not realizing that there are multiple waitlists. PHAs should have the ability to structure these lists in a way that makes the most sense for their portfolios and their communities.

**How do PHAs ensure mobility access with a time-limited voucher (i.e., FUP voucher that is assisting a FUP-eligible youth)?**

This is a task that should be left to PHAs. As mentioned before, a PHA should make sure that program participants understand their rights, but should not pressure tenants to do anything that would take away their choice.

**How do PHAs ensure full occupancy of PBV units with time-limited vouchers and limited numbers?**

At this time, NAHRO has no suggestions to offer for this question.

NAHRO thanks HUD for carefully considering its comments before implementing these voucher provisions.

Sincerely,

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