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Regulations Division
Office of the General Counsel
Department of Housing and Urban Development
451 7th St. SW
Room 10276
Washington, DC 20419-0500


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 “Section 209 of the Economic Growth, Regulatory Relief, and Consumer Protection Act: Initial Guidance” published in the Federal Register on Thursday, February 14, 2019.

Formed in 1933, NAHRO represents over 20,000 housing and community development individuals and agencies. Collectively, our members manage over 970,000 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. NAHRO has the unique ability to represent public housing agencies, local redevelopment agencies, and other HUD grantees of all sizes and geography.

After a brief introductory section, this letter is divided into two sections. The first section provides NAHRO’s general thoughts about the implementation of the provisions of Section 209 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Economic Growth Act), while the second section responds to HUD’s specific queries about implementation.

Section I – General Thoughts

While the Department has specific questions that it wishes addressed, NAHRO has specific concerns that it would like addressed.
Iterative Process of Implementation

NAHRO believes that this should not be the end of HUD consultation with its stakeholders in implementing this bill. There should be additional opportunities for HUD’s stakeholders to provide implementation feedback as HUD has firmer language illustrating how it wants to implement these provisions. This notice should be viewed as analogous to an advanced notice of proposed rulemaking; with firmer regulatory and notice language in place, HUD’s stakeholders will be able to comment with greater clarity and detail.

Energy Conservation Program

Although NAHRO has responded to HUD’s specific inquiries on appropriate data sets to gather weather related data and its ability to track money saved from the program (see below). NAHRO has specific thoughts on appropriately implementing the program set by Section 209(b) of the legislation.

First, NAHRO emphasizes that the program created by this section of the legislation is not an Energy Performance Contract (EPC). The legislative intent of the provision is to create a much simpler alternative that would reduce the timeline for the implementation of energy savings measures; be accessible by small PHAs; give small PHAs discretion on the best approach for financing energy efficiency; and incentivize PHAs through the retention of a hundred percent of energy savings. Use of the program would entail these steps:

1. Small PHAs notify the local HUD Field Office that they require HUD to freeze their consumption levels;
2. The small PHA submits an overview on the nature of their cost-saving energy project with its notification for a frozen consumption level requirement;
3. The Department, within a reasonable time, will notify the PHA of the frozen consumption level effective date; and
4. The Department may provide technical assistance, as requested by the small PHA to secure appropriate technical assistance to ensure the success of their energy efficiency project.

Second, as the program is not an EPC and is meant to operate through a more streamlined process, it should not be subject to review and approval procedures as is required by HUD’s Energy Center for EPCs or similar reviews by the PIH policy office. In keeping with the provision’s legislative intent, small PHAs need only to notify HUD that they require that their consumption to be frozen to receive a hundred percent of all energy savings resulting from the implementation of energy efficiency measures. Proper implementation of this provision will streamline the recognition of energy efficiency savings for small PHAs and be less burdensome to HUD staff.

NAHRO recommends codifying the energy conservation program under 24 C.F.R. § 990.170 by creating a new provision (g) under the heading “Computation of utilities expense level (UEL): Overview.” It should not be combined with language in 24 C.F.R. § 990.185.

Section II – Responses to HUD Questions

Section 209(a) – Small PHAs

How should HUD interpret the words “predominantly operates” in the phrase “predominantly operates in a rural area”? For example, a PHA could be deemed to predominately operate in a rural area if one or more of the following conditions apply: (1) The PHA’s physical address is in a rural area (a PHA-based definition); (2) more than 50 percent of the buildings occupied by Housing Choice Voucher beneficiaries and public housing residents are in rural areas (a building-based definition); or (3) more than 50 percent of the tenants served live in rural areas (a household-based definition). Please note that HUD is not seeking comment on the definition of “rural area” as this is provided in statute.
The Department should interpret the words predominantly operates to include all three of the options described above. That is, a PHA should be deemed to predominantly operate in a rural area if one or more of the following conditions apply:

1. The PHA’s physical address is in a rural area; or
2. More than 50 percent of the buildings occupied by Housing Choice Voucher beneficiaries and public housing residents are in rural areas; or
3. More than 50 percent of the tenants served live in rural areas.

If HUD is unable or unwilling to adopt the definition above, the next best definition to adopt would be the first definition (i.e., the PHA’s physical address is in a rural area). This definition would be ideal because it would be easy for HUD to implement and the physical address of the PHA would not change frequently. Thus, if HUD should reassess the rural nature of the PHA frequently (which NAHRO does not recommend; see below), the PHA’s rural status would not change and the PHA would not be subjected to alternating regulatory regimes depending on a changing status.

How often should HUD reassess the rural nature of each PHA? For example, should HUD reclassify PHAs every time the Office of Management and Budget, the U.S. Census Bureau, or the U.S. Department of Agriculture’s Economic Research Service updates data used in the definition of rural areas? Also, the “predominately operates” component may change when buildings are added or lost, or when tenants move under a household-based definition.

Ideally, when a PHA receives rural status, it should maintain that status indefinitely. Similar to how areas that fall within HUD’s metrics for Small Area Fair Market Rent (FMR) remain with that Small Area FMR designation indefinitely, PHAs should maintain their rural status indefinitely. The rationale behind this choice is to prevent PHAs from shifting in and out of the rural designation and concurrently shifting between regulatory regimes. Transitioning between different sets of regulations imposes costs as processes have to be re-aligned with the new regulations and staff has to be retrained on the new regulations.

If HUD is unable or unwilling to adopt this, then HUD should space out the reassessments over some long time horizon. While this number is arbitrary, NAHRO recommends 10 years. This way PHAs will have a chance to properly implement the appropriate regulatory requirements and will not be forced to shift to another regulatory regime too quickly. The 10-year time span should be synchronized to match the time span between national censuses. Each transition will be an administrative cost and minimizing them will result in less overall administrative burden.

Sample regulatory language can be found below (HUD should modify it to integrate with the other portions of the rule):

(a) Setting Rural Status. (1) HUD will set rural status for certain PHAs, such designations will be permanent, for use in the administration of tenant-based assistance under the Housing Choice Voucher program and the public housing program. HUD will determine those PHAs deemed to operate in a rural area based on whether one or more of the following conditions apply:

(i) The PHA’s physical address is in a rural area; or
(ii) More than 50 percent of the buildings occupied by Housing Choice Voucher beneficiaries and public housing residents are in rural areas; or
(iii) More than 50 percent of the tenants served live in rural areas.

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1 The Department’s regulation stating the Small Area FMR designations are permanent can be found at 24 C.F.R. § 888.113(4).
Are there other factors or approaches that HUD should consider in determining whether a PHA predominately operates in a rural area?

At this time, NAHRO does not believe that there are other factors that HUD should consider in determining whether a PHA predominately operates in a rural area.

Are there factors that HUD should consider in determining whether a PHA meets the criteria of administering 550 or fewer combined public housing and section 8(o) units?

Yes, for the purposes of setting a rural designation, HUD should not consider special purpose vouchers in the unit count. Also, units that are converting to Project-Based Rental Assistance (PBRA) under a Rental Assistance Demonstration (RAD) Commitment for Housing Assistance Payment (CHAP) should not be considered when determining the 550 or fewer combined public housing and section 8(o) units.

Section 38(d) of the 1937 Act – Reduction of Administrative Burdens

How should HUD define the $100,000 total cost threshold for development or modernization project costs? For example, what types of costs should be included? Should costs associated with disposition and conversion actions be treated as development or modernization costs?

The Department should take an expansive view of the types of activities that a development or modernization project should encompass. Dispositions and conversions should be treated as development or modernization projects. Additionally, all eligible uses of operating fund and capital fund should fall within the scope of development and modernization projects.

Section 209(b) Energy Conservation

The statute states: “The Secretary shall make an initial one-time adjustment in the consumption base level to account for differences in the heating degree day average over the most recent 20-year period compared to the average in the consumption base level.” What are good sources for obtaining 20 years of heating degree day data? What resources, computer analysis programs, databases, or websites could HUD consult to determine utility consumption adjustments to account for temperature variations relative to the most recent 20 years.

After consulting with our members, NAHRO believes that HUD can best get this information through consultation with other portions of the federal government, including but not limited to the Environmental Protection Agency (EPA); the National Aeronautics and Space Administration (NASA); and the National Oceanic and Atmospheric Administration (NOAA). There may be other agencies, sub-agencies, or departments within the federal government that HUD may want to speak with. A collaborative process with all relevant entities participating would lead to optimal results.

Some websites that may provide information on heating degree day data are the following:

1. https://www.cpc.ncep.noaa.gov/products/analysis_monitoring/ceds/degree_days/;
2. https://www.eia.gov/energyexplained/index.php?page=about_degree_days; and

We also encourage the Department to speak with outside consultants who have experience with resilience planning and experts that have experience with HUD’s energy conservation programs. These experts may know where to find the appropriate data to use.\(^2\)

\(^2\) One individual HUD may wish to consult is Dick Santangelo, P.E. of Apollo Engineering Solutions, LLC; (703) 627-7161; www.ApolloEngineeringSolutions.com.
The statute permits PHAs to use savings for either Capital Fund or Operating Fund eligible expenses. PHAs with less than 250 units can follow PIH Notice 2016-18 or a successor notice on the flexible use of operating funds. To the extent that PHAs with more than 250 units use this flexibility to expend operating funds for capital purposes, they will need to document the savings, and track the expenditure of the funds. What methods for tracking and reporting on the expenditure of such operating funds would enable monitoring, but limit burden to PHAs.

If the funds which this question is referring to are the savings from this energy conservation program, then NAHRO believes that HUD should streamline any reporting requirements such that only enough information is collected to illustrate the effectiveness of the program to Congress. Additionally, there should be no federal constraints on the use of funds saved through the program. The Department should issue a new PIH notice superseding PIH Notice 2016-18 so that agencies with fewer than 250 units that benefit from the cost savings advantages of this program should also receive the streamlined reporting requirements mentioned above and not be subjected to federal constraints on the use of this saved funding. These amounts should not have the same use requirements as direct subsidies from HUD. Having a streamlined tracking and reporting process will provide another incentive for PHAs to use this program.

**Reporting by Agencies Operating in Consortia**

*What are the current limitations with HUD’s systems the prevent full consolidated reporting by PHAs engaged in consortia? What improvements to HUD’s systems should HUD consider for such reporting?*

After consulting with our members, we believe there is much duplicitous reporting, but that this is a complex conversation that requires more than an answer in a comment letter. NAHRO recommends that HUD pull together a working group with appropriate HUD staff, industry-group representatives, software developer representatives, finance-oriented individuals that work at PHAs, representatives from accounting firms who have experience working with PHAs, and any other relevant officials or employees. An appropriately selected working group will have the proper expertise to help streamline the reporting requirements.

**Shared Waiting Lists**

*Because the statute refers to software that supports the use of “shared waiting lists” by PHAs and owners receiving HUD assistance, HUD seeks public input on the definition of a “shared waiting list.” HUD is considering defining “shared waiting list software” as software that enables a household to submit a single application to get on multiple waiting lists.*

After discussing with our members, it became clear that there is no single shared consensus for what a “shared waiting list” should be. Some examples of what shared waiting list might be are as follows:

- **Shared internal waiting lists** – a list that is combined for all forms of housing assistance, irrespective of program, but with the caveat that waiting list applicants must meet the requirements for the program with the available unit when they are pulled up. The Department creating and providing free software to enable this would be useful.
Shared waiting list by geography – A shared waiting list like HUD envisions in this notice where the software acts like a sorting mechanism which sorts applicants into a PHA’s individual waiting list based on unit availability, requirements of the program, and eligibility of the household. Our members stressed that this list should be voluntary (i.e., an agency should have the option over whether it wants to participate). Additionally, our members felt that the list should not exceed the geographic scope of a state. For example, our members would prefer shared waiting lists that encompassed counties, cities, or even states, but not multiple states nor national shared waiting lists. In this conception of a shared waiting list, all PHAs would have the option of joining, and would be able to do so on a voluntarily basis. Additionally, if the PHA felt for any reason that it wanted to remove itself from the shared waiting list or wanted to close its waiting list, it would be able to do so without requiring HUD permission.

What types of PHAs and owners might be the best candidates for a shared waiting list?

The PHAs and owners that would benefit the most from shared waiting lists would be those that are in dense, urban areas where there may be multiple smaller PHAs with overlapping jurisdictions. For program participants, it would be beneficial for them to only have one application that they had to submit to apply to multiple programs.

A similar case may occur in jurisdictions where there is a larger PHA with a jurisdiction that encompasses smaller PHAs. For example, if there’s a PHA whose jurisdiction encompasses a county, but there are several smaller town or city-level PHAs within that county. Software allowing only one application to be submitted by program participants would be beneficial to simultaneously apply to both or multiple programs.

Do owners receiving HUD assistance have unique needs that may make it difficult for them to use a shared waiting list?

NAHRO recommends seeking additional information from landlords and owners either through working groups or in additional notices seeking implementation instructions.

Would there be a need for additional software security in providing access to, and using, a shared waiting list?

Yes, additional security would be needed to ensure that personal details about program participants are not inadvertently shared. NAHRO believes that a simple way to ensure that adequate security requirements are met is to host the shared waiting list or the portal combining multiple waiting lists on HUD servers. If HUD contracts with outside vendors to provide the waiting list portal, then HUD should ensure that the vendors are contractually obligated to meet industry standards in safeguarding personal information.

NAHRO thanks the Department for the opportunity to share these comments. For additional questions or clarifications, please contact Tushar Gurjal at tgurjal@nahro.org.

Sincerely,

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