February 8, 2012

The Honorable Sandra B. Henriquez  
Assistant Secretary for Public and Indian Housing  
U.S. Department of Housing and Urban Development  
451 Seventh Street, SW  
Room 4100  
Washington, D.C. 20410

Dear Assistant Secretary Henriquez:

On behalf of the National Association of Housing and Redevelopment Officials’ (NAHRO’s) members, I am writing to you regarding Notice PIH 2012-7 as issued February 2. This notice provides guidance relating to the application processing requirements for PHAs requesting HUD approval to demolish, dispose or both demolish-and-dispose of public housing as authorized by Section 18 of the United States Housing Act of 1937. We are disappointed that the PHA industry was not included in the formulation of this major policy change, and while we recognized and appreciate that the Department reached out to us to discuss the notice on the day before its publication, this outreach occurred unacceptably late in the process. Put simply, the secretive manner in which the Department developed and implemented this policy undermines the spirit of partnership between HUD and the PHA industry. Furthermore, NAHRO believes that the changes made by this notice constitute rulemaking under the HUD Reform Act, and should therefore have been appropriately considered through a notice of rulemaking with a corresponding public comment process prior to implementation.

NAHRO is particularly concerned by Section 10 of the notice, which states: “HUD disapproves SAC applications when a PHA’s supporting certification is based on insufficient public housing funds (either Capital and/or Operating) as such certifications are inconsistent with the 1937 Act in light of alternative resources.” This preemptive categorical exclusion of an entire class of possible applications is arbitrary, especially in the context of present financial realities.

In this regard, NAHRO believes the discussion of alternative resources in the notice is misleading. The notice lists Choice Neighborhoods, tax credits, loans against future Capital Fund allocations, and operating reserves as examples of alternative resources. NAHRO notes that Choice Neighborhoods grants are extremely competitive, even more so than the HOPE VI funds they replaced at the Department’s urging. Competitive tax credits are often unavailable. As-of-right tax credits carry significant transaction costs and rely on bond financing, the ratings for which have declined as the
federal appropriations for public housing have been cut. Those properties which are already underfunded are unlikely to be able to secure a loan against future appropriations. And on top of achieving Congressional approval of a $750 million against operating reserves to supplement an inadequate Operating Fund request for FY 2012, HUD recently placed additional and unnecessary restrictions on the use operating reserves for major capital improvements through PIH 2012-2.

Finally, the notice states that “Especially with the passage of the Rental Assistance Demonstration (RAD) program...there are options other than disposition.” NAHRO reminds the Department that RAD is limited to 60,000 units, has no associated incremental funding, and is a demonstration intended to test conversion of public housing to assistance under Section 8. This framing of RAD as the panacea for all of the needs of public housing is simply not consistent with the facts on the ground. NAHRO is increasingly concerned by the Department’s single-minded approach to public housing preservation through the Rental Assistance Demonstration and its apparent willingness to sacrifice other resources and tools in order to promote it. This most recent effort to effectively cut off PHAs’ statutory right to pursue conversion to Section 8 through the Demo/Dispo process is simply the latest in a series of blows against the sensible, holistic approach to preservation advanced by the industry, coming on the heels of the Department’s unprecedented proposals to slash the Capital Fund in FY 2011 and offset the Operating Fund by $1 billion in FY 2012.

We suggest that the language of Section 18 does not confer upon the Department unfettered discretion. With this in mind, NAHRO urges the Department to retract PIH 2012-7 and engage the PHA industry in a meaningful dialogue about the tools necessary to preserve the public housing stock for future generations of vulnerable Americans. We continue to believe that no single approach is sufficient to meet the very serious needs of this essential component of our national infrastructure, and effective preservation will require a suite of tools to meet the variety of needs and contexts of public housing across the country. NAHRO looks forward to continuing to work with the Department to streamline the public housing program, reduce regulatory burdens and obstacles currently faced by PHAs, and develop additional tools and flexibilities to allow PHAs to preserve and invest in their public housing.

Sincerely,

Saul N. Ramirez, Jr.
Chief Executive Officer

cc: Dominique Blom, Deputy Assistant Secretary for Public Housing Investments
    Deb Gross, Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives