VIA ELECTRONIC MAIL

December 15, 2011

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 members of the National Association of Housing and Redevelopment Officials (NAHRO) and the Public Housing Authorities Directors Association (PHADA), we are writing to share recommendations and concerns related to the Department’s impending implementation of the Operating Fund offset against public housing authorities’ operating reserves for 2012. We raise these concerns and make these recommendations trusting that you will follow through on your commitment, as stated in recent correspondence to NAHRO, to “take a careful and deliberative approach to implement the offset.”

As you well know, both of our organizations vigorously opposed the offset as proposed by the administration, and we remain steadfast in our belief that the offset is simply bad public policy. The Congress has now spoken, however, and so we must turn our attention to ensuring that the Department implements the offset in a manner that not only complies with the parameters set forth in the FY 2012 appropriations act but also minimizes the harm to PHAs, the inventory they manage, and the residents they serve. We would contend that the Congress has provided the Department with enough discretion to substantially limit the damage of the offset, but only if the Department makes the right choices and exercises an appropriate measure of restraint.

In limiting the offset against public housing operating reserves to no more than $750 million, the Congress acknowledged the serious, negative consequences that the offset will undoubtedly have on agencies’ future ability to maintain their properties and serve their residents. At the same time, by capping the offset, the Congress essentially guaranteed that all agencies will receive a pro-rated share of their Operating Fund subsidy eligibility.

We would note also that the appropriations act does not require or direct HUD to offset operating reserves up to the full $750 million as authorized by the bill. HUD does have the discretion to exercise restraint in this regard, and we urge the Department to give strong consideration to
limiting the allocation adjustment further. By spreading the budgetary shortfall across all PHAs in a more meaningful manner, HUD can mitigate some of the harmful effects on any particular agency. Furthermore, we strongly suspect that a responsibly conducted, prospective appeals process – as would seem to be mandated by the FY 2012 act – would result in the granting of a substantial number of exclusions and may reveal that there is in fact less than $750 million in reserves that are truly not legitimately committed to a future project or expense. Such a process should recognize not only existing contractual commitments, but also PHAs’ near-term plans as documented through formal planning processes, including the PHA 5-Year Plan or MtW Plan.

To the preceding point, in satisfying the appropriations act’s requirements related to the appeals process, NAHRO and PHADA trust that the Department will evaluate all appeals based on the merit of the individual claim and without regard to their impact on the Department’s ability to reach an arbitrary target in terms of the total amount of reserves to be offset. In addition, it is essential that HUD maintain its stated commitment to protect a minimum reserve threshold of four or six months’ worth of operating expenses, depending on agency size. If after the appeals process is completed the Department finds that the four- or six-month thresholds would need to be lowered in order to reach the targeted offset amount, then we believe the Department should instead exercise its discretion by decreasing the size of the offset and adjusting the across-the-board proration accordingly.

NAHRO and PHADA also ask that HUD move expeditiously to provide PHAs with the flexibility to use operating reserves for capital improvements, as directed by the Congress. Despite repeated assurances from the Department that guidance to PHAs on eligible uses of such funds is forthcoming, none has yet been issued. In addition, NAHRO and PHADA once again request that the Department formally clarify that your assertion – conveyed through your February 2011 letter to PHA executive directors – concerning the use of reserve balances for capital or modernization activity is not and never was applicable to agencies with fewer than 250 units of public housing. As you know, section 9(g)(2) of the 1937 Act, as amended by QHWRA, clearly states that non-troubled PHAs with fewer than 250 units of public housing may use Capital or Operating Funds interchangeably for any eligible capital or operating expense. We are disappointed that the Department has not followed through on its commitment to issue such a clarification.

We also recommend that the Department move quickly to waive several of the restrictions imposed by asset management for CY 2012. The Department has indicated that it intends to override the foundational funding formula upon which the asset management restrictions are based by funding each AMP at the PHA-wide average subsidy level. As a result, it would be both illogical and unreasonable to expect that PHAs could continue to manage their funds under asset management restrictions. If funding is not distributed based on the needs and resources currently held by each property, PHAs must have full flexibility to shift Operating Funds as well as reserves between their AMPs in order to ensure that the needs of each property can be met for the year. PHAs subjected to an offset will require increased flexibility to distribute limited
resources among their properties, especially if each property is funded at a level reflective of the PHA-wide proration. NAHRO and PHADA therefore urge the Department to remove all restrictions on the transfer of funds between AMPs during CY 2012, regardless of cash flow.

Additionally, PHAs must be allowed to pay asset management fees without regard to whether the property produces positive cash flow. The offset targets those properties which have historically had the best financial performance, making positive cash flow nearly impossible for CY 2012. NAHRO and PHADA believe it is unreasonable to further penalize these agencies by barring them from charging properties an asset management fee based on financial hardship directly resulting from the Department’s policies. PHAs depend on asset management fees to operate their Central Office Cost Center. It would be simply unfair to hold PHAs financially accountable for the administration’s decision to request only 80 percent of the funding needed for the Operating Fund for 2012, a decision which undercuts the financial viability of the asset management model.

Finally, HUD should provide relief for all sub-indicators of the Public Housing Assessment System that will penalize PHAs as a direct result of having reserves offset. The Department should suspend these sub-indicators or issue only advisory scores noting the effect of circumstances outside of a PHA’s control. These sub-indicators include, but are certainly not limited, to the Months Equivalent Net Asset Ratio (MENAR), Quick Ratio, and Debt Service Coverage Ratio. The reduction to assets reflected in the numerator of these calculations, which will result directly from the implementation of an offset, will unfairly disadvantage PHAs in each of these performance measures. Given the increased emphasis that has been placed on PHAS scores by HUD, PHA boards, Congress, and the general public, it is essential that PHAs be held harmless for these circumstances that are outside of their control.

We thank you for your consideration of our recommendations and look forward to your response. We would also welcome the opportunity to meet with you and your staff to discuss our recommendations in greater detail as needed.

Sincerely,

Saul N. Ramirez, Jr. 
Chief Executive Officer  
National Association of Housing and Redevelopment Officials

Timothy G. Kaiser  
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Public Housing Authorities Directors Association

cc:    David Vargas, Deputy Assistant Secretary for Real Estate Assessment Center  
       Shauna Sorrels, Director, Public Housing Programs