MEMORANDUM

To: Interested Parties
From: Jeff Falcusan, Director of Policy and Program Development
Re: Anomalies under a Potential Year-Long Continuing Resolution
Date: January 22, 2013

Appropriators have raised the possibility of resolving the FY 2013 appropriations process through the enactment of a year-long Continuing Resolution. Should the Congress signal that it intends to adopt this approach, NAHRO urges the Administration to request the inclusion of the anomalies recommended in this memorandum. Please feel free to contact us with any questions you may have regarding NAHRO’s recommendations.

PUBLIC HOUSING OPERATING FUND

Background: For 2012, the Congress accepted the Administration’s recommendation and funded the Public Housing Operating Fund at $3.982 billion, $1 billion below total subsidy eligibility. This funding level was paired with a $750 million offset against “excess” existing operating reserves held by Public Housing Authorities (PHAs). Secretary Donovan repeatedly stressed that the Department recommended this offset only as a one-time measure, a tough decision forced by the overall budget difficulties. However, as a result of the Department’s implementation of the offset, hundreds of PHAs received no funding at all for 2012, while hundreds more were subjected to deep cuts to their annual operating subsidy, forcing them to dramatically deplete their available reserves in order to maintain operations. Even those PHAs that were not subjected to any offset were provided a prorated amount of the funds needed to operate their properties.

Absent an anomaly, a year-long CR at the 2012 level would provide only 80 percent of PHAs’ operating costs for calendar year 2013. This would be the deepest proration in the program’s history and would have a disastrous effect on PHAs’ ability to maintain their properties and serve their residents. Without the necessary staff, PHAs would be unable to process unit turnovers as units become vacant, undoing recent gains in occupancy. Maintenance activities would be deferred, and major capital improvements would be derailed. Layoffs and furloughs would be inevitable, eroding the long-term organizational capacity that PHAs have painstakingly developed and limiting agencies’ ability to ramp up activities even if a more responsible level of funding is restored in future years.

Put simply, an 80 percent proration is untenable. Recognizing this basic fact, the Department has made initial distributions of 2013 operating subsidy based on the lower of last year’s proposed Congressional funding levels ($4.5 billion), rather than the rate of operations ($3.9 billion).
provided for under the current Continuing Resolution. Because the Department has taken this welcome action, it is even more essential that a full-year CR include an anomaly. Without an anomaly, PHAs would be forced to operate under the equivalent of a proration of between 73 and 77 percent (depending upon the timing of implementation) for the remainder of the calendar year.

**Recommendation:** Make the following recommendations to the Congress regarding a year-long Continuing Resolution’s treatment of the Public Housing Operating Fund account:

- Provide for a rate of operations as close as possible to 100 percent of operating subsidy eligibility for 2013, but no less than $4.5 billion.
- Eliminate the provision directing the Secretary to “take into account public housing agencies’ excess operating fund reserves” when determining PHAs’ allocations, along with other provisions from the 2012 appropriations act related to such an allocation adjustment.
- Allow the provision directing the HUD Secretary to “provide flexibility to public housing agencies to use excess operating reserves for capital improvements” to carry forward.

**CAPITAL FUND**

**Background:** For 2012, the Public Housing Capital Fund was funded at $1.875 billion, the lowest funding level in the history of the program. Between 2010 and 2012, the Capital Fund experienced an unprecedented 25 percent reduction from what was already an inadequate funding level given the inventory’s annual accrual of capital needs. According to the Capital Needs Assessment recently completed by Abt Associates at HUD’s direction, the portfolio already has a modernization backlog in excess of $26 billion, with an annual accrual rate of approximately $3.4 billion.

**Recommendation:** Urge the Congress to provide for a rate of operations equivalent to at least $1.985 billion for the Public Housing Capital Fund, which is the level proposed by both the House and Senate last year during deliberations over the FY 2013 HUD appropriations bill.

**SECTION 8 TENANT-BASED REANTAL ASSISTANCE**

**HOUSING CHOICE VOUCHER PROGRAM ADMINISTRATIVE FEES**

**Background:** HUD’s FY 2013 budget proposed $1.575 billion for “administrative and other expenses of public housing agencies in administering the Section 8 tenant-based rental assistance program,” of which up to $50 million “shall be available to…allocate to public housing agencies that need additional funds to administer their Section 8 programs” at pre-QHWRA rates, leaving at least $1.525 billion for ongoing administrative fees. Because vouchers from incremental and special purpose programs such as HUD-Veterans Affairs Supportive Housing (HUD-VASH), Non-Elderly Disabled (NED), the Family Unification Program (FUP), tenant-protection vouchers, and opt-outs will be leased and therefore “roll into” the Section 8 tenant-based renewal account for FY 2013, HUD has previously estimated that the proposed funding level would provide an 81 percent pro-ration for 2013.

The FY 2012 act provided just $1.3 billion for ongoing administrative fees, $97 million less than the FY 2011 enacted level. If the 2012 level of $1.3 billion is allowed to carry forward throughout 2013, NAHRO has estimated that the full-year 2013 ongoing administrative fee funding pro-ration
will fall to between 69 and 74 percent, a range that would represent the lowest pro-ration in the 37-year history of Section 8 tenant-based voucher programs. And while this proration is based on the 2012 funding level, it is significantly lower than the final 2012 proration of 80 percent since the Department (as requested by NAHRO) supplemented appropriated 2012 administrative fee funding with unobligated Tenant-Based Rental Assistance balances from prior fiscal years.

We are encouraged that the House was poised to provide no less than $1.525 billion for ongoing Section 8 administrative fees for 2013, while the Senate appeared ready to provide no less than $1.560 billion. As the Senate Appropriation Committee noted last year in the report accompanying its version of the FY 2013 HUD funding bill, the impact of recent reductions in administrative fee funding “is beginning to adversely affect the ability of PHAs to serve tenants,” and, “in the past year, several PHAs have transferred their programs, while others refused new HUD-VASH vouchers because of insufficient administrative fees.”

Since FY 2003 - the last year that PHAs’ received 100 percent on-going administrative fees – 213 PHAs or 9 percent of all PHAs administering voucher programs have “handed back” their programs to HUD or transferred them to another PHA. Even with the largely adequate HAP funding provided under the FY 2012 act, the 80 percent ongoing administrative fee pro-ration for 2012 has resulted in widespread PHA staff layoffs, failures to fill vacated positions, staff furloughs, reduction of work hours, and workload increases, all of which has caused “high performer” PHAs under HUD’s Section Eight Management Assessment Program (SEMAP) falling to “standard performer” for the first time ever.

**Recommendation:** For ongoing administrative fees for 2013, urge the Congress to provide for a rate of operations equivalent to at least the administration’s request ($1.525 billion).

**RESCISSION OF HOUSING ASSISTANCE PAYMENT RESERVES**

**Background:** The FY 2012 act included a $650 million rescission from PHAs’ Net Restricted Assets (NRA) “(in accordance with VMS data in calendar year 2011 that is verifiable and complete), as determined by the Secretary.” Section 236 of the general provisions in the act enabled HUD to derive the rescission from reductions to PHAs’ calendar year 2012 Housing Assistance Payment (HAP) budget allocations. In implementing this offset provision for FY 2012 for all PHAs with more than 50 authorized vouchers, HUD offset any NRA amount that exceeded seven percent of PHAs’ CY 2012 HAP funding eligibility. For these PHAs, the threshold used to determine “excess” HAP reserves was the lowest in the 37 year history of the voucher program. For PHAs with 50 or fewer vouchers, HUD offset any NRA amount greater than 50 percent of their CY 2012 HAP funding eligibility.

Neither the Senate nor the House included HUD’s FY 2013 budget request for the authority to conduct a rescission of PHAs’ Housing Assistance Payment (HAP) Reserves (formerly known as Net Restricted Assets). If the FY 2012 act’s rescission provision carries forward in a Continuing Resolution, it would likely result in PHAs having to terminate HAP contracts with property owners with existing voucher-assisted households in 2013.

**Recommendation:** Urge the Congress to prevent a $650 million rescission from carrying forward.
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

**Background:** The FY 2012 appropriations act represented a break with past practice in that it did not establish a fixed amount of the top-line Community Development Fund appropriation to be made available for the CDBG program. Instead, the act stipulated that “not less than” $2.948 billion was for the CDBG program, to include both formula allocations and grants to insular areas, while Section 239 of the act allowed “up to” $300 million of the Community Development Fund appropriation to be awarded directly to states and units of general local government for activities “related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas” as a result of a Presidentially declared disaster in 2011.

Although we appreciated that the Congress recognized the need to make resources available to address disasters, the approach chosen by appropriators placed the Department in a difficult position. Although the Department could have, at its discretion, chosen to make up to $3.248 billion available for the CDBG program for FY 2012 (the amount remaining after accounting for the $60 million set-aside for the Indian CDBG program mandated by the act), the Department – believing it was being responsive to congressional intent – ultimately set aside the full $300 million for disaster grants. We believe this course of action set a harmful and misguided precedent for the program and should not be repeated. To that end, we were pleased that both the House and Senate appeared poised last year to substantially increase the funding available for CDBG formula allocations for FY 2013.

Regarding CDBG disaster assistance, the best and most appropriate vehicle for providing such funding in any year is a supplemental appropriations act. Furthermore, regardless of the legislative vehicle, CDBG disaster assistance should be designated as emergency disaster relief spending. According to a September 2011 analysis performed by OMB, the Congress (as of the date of the study’s publication) had provided $29.859 billion in discretionary budget authority for disaster CDBG funding over the previous decade. Of that total, only $3 million (just one one-hundredth of one percent) of that total was provided through vehicles other than supplemental appropriations bills, and every dollar of disaster CDBG funding provided through supplemental appropriations acts was designated as an emergency requirement and necessary to meet emergency needs. The FY 2012 act clearly represented a departure from a long-standing, effective approach to providing disaster CDBG funding. We are therefore pleased that the Congress has returned to past practice by providing CDBG disaster relief as emergency spending through the legislative package aimed at assisting communities affected by Hurricane Sandy.

We note that Section 239 of the FY 2012 Act provided an additional $100 million in CDBG disaster assistance. Unlike the $300 million set-aside referenced above, however, this second portion of CDBG disaster funding is designated “as being for disaster relief pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985.” This is, in our opinion, a more appropriate and responsible approach if such funding must be provided through the regular appropriations act, although a supplemental should remain the preferred method. There is no need, however, for this particular provision to carry forward under a year-long CR, and it has, in fact, already been stricken under the CR currently in effect.

**Recommendation:** Eliminate the discretionary authority under Section 239 of the FY 2012 act that would otherwise allow the HUD Secretary to set aside FY 2013 Community Development Fund funding for disaster CDBG grants, thus ensuring that $3.248 billion is available for CDBG formula allocations and grants to insular areas.
HOMELESS ASSISTANCE GRANTS

Background: NAHRO has previously expressed support for the President’s request for $2.231 billion for McKinney-Vento Homeless Assistance Grant programs for FY 2013. This funding is critically important as HUD attempts to meet growing renewal demands while also implementing programmatic reforms resulting from the enactment of the Homeless Emergency Assistance and Rapid Transition to Housing Act.

Recommendation: Urge the Congress to provide for a rate of operations equal to the President’s request.