Re: [Docket No. FR-5890-P-01] Narrowing the Digital Divide Through Installation of Broadband Infrastructure in HUD-Funded New Construction and Substantial Rehabilitation of Multifamily Rental Housing

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), we are pleased to offer the following comments in response to the proposed rule (FR-5890-P-01) entitled “Narrowing the Digital Divide Through Installation of Broadband Infrastructure in HUD-Funded New Construction and Substantial Rehabilitation of Multifamily Rental Housing,” published in the Federal Register on May 18, 2016. Formed in 1933, NAHRO represents over 20,000 individual and agency members, including public housing authorities, community development departments, and redevelopment agencies. In all, NAHRO members provide housing for more than 7.9 million low-income people and bring more than $1.5 billion Community Development Block Grant and HOME funding to their communities.

NAHRO appreciates this opportunity to comment on this notice of proposed rulemaking. We commend the efforts by the U.S. Department of Housing and Urban Development (“HUD”) to provide multifamily rental housing residents with the platform to participate in the digital economy. NAHRO supports the practicality of installing broadband infrastructure whenever feasible, and for many housing authorities and local governments, the inclusion of such infrastructure is already considered to be part of the basic housing construction element. The following comments offered by NAHRO are largely in response to HUD’s specific questions for comment. We hope NAHRO’s recommendations will further refine the proposed rule in a positive manner.
HUD should ensure grantees are not locked into obsolete technology

The proposed rule offers all broadband infrastructure options available in today’s current market, including hardwire and wireless technology. However, NAHRO recommends for HUD to consider only issuing a range of Internet speeds as the rule’s objective and to proactively leave the manner of delivering broadband systems up to each grantee. It is imperative to NAHRO members that HUD allows program flexibility by ensuring future iterations of this rule will not lock program grantees into obsolete broadband technology. Additionally, as the FCC definition for “advanced telecommunications capability” improves, HUD should clarify how the new standards will be implemented by HUD in regards to this rule.

HUD should be addressing the last mile connection in rural and underserved areas

NAHRO agrees with the rule’s preamble that the rural location of a project could make the installation of broadband infrastructure infeasible. The concept that broadband infrastructure must be placed into a building when there is no broadband connection available yet is impractical because the broadband technology industry is ever-changing. If rural communities must invest already-scarce federal funds into broadband infrastructure that meet today’s capacity standards, by the time that a connection does reach a rural housing project, that infrastructure may already be obsolete (or may not be most cost-effective option). NAHRO is concerned that this rule would require rural and underserved communities to participate in planned obsolescence, and without additional efforts to bring in broadband connections, the installation of infrastructure will become a waste of funds. HUD should place greater emphasis on addressing that “last mile connection” and coordinate with USDA to see if agencies could leverage their programs to achieve broadband connection.

HUD should clarify how feasibility and infeasibility is defined and documented

NAHRO is supportive of the three exceptions provided in the proposed rule and considers a project’s pre-rehabilitation cost estimates to be a reasonable type of documentation to demonstrate feasibility. However, more clarity is needed on the specific formula or source of pre-rehabilitation estimates that will be required. Additionally, since there are numerous factors that may affect a project’s costs, (e.g., location, building type, scope), HUD must provide specificity and clarify around the standards that will be used to determine whether a project meets the definition of infeasibility due to costs. Furthermore, local HUD field offices should have the ability to quickly issue infeasibility exceptions so that projects are not held up by administrative red tape.

The proposed rule states that “[r]ecipients and owners will be responsible for maintaining documentation that justifies the recipient’s determination of infeasibility. HUD will consider providing additional guidance on this issue when the final rule becomes effective” (pg. 31184).
Since the proposed rule does not clarify how feasibility or infeasibility will be documented, NAHRO recommends that HUD establish a second public comment period that will specify what documentation developers should maintain. Program recipients and developers should have an opportunity to further comment on these documentation standards. Additionally, HUD to withhold from sanctioning grantees when infeasibility cannot be demonstrated after a project is completed. Instead, the Department should direct those grantees to develop a way to bring Internet access to the project’s residents. HUD’s limited resources should remain on the goal of narrowing the Digital Divide, not sanctioning grantees.

**HUD should use pre-rehabilitation estimates only to determine substantial rehabilitation**

NAHRO recommends for pre-rehabilitation estimates for the project alone be used to determine whether a project meets the definition of substantial rehabilitation. Increases in costs that arise during the process of rehabilitation should not be included. In a scenario where a project is initially exempt from the rule, but unexpected costs incurred during the rehabilitation pushes the project over the substantial rehabilitation threshold, the unanticipated costs of broadband infrastructure could be financially detrimental to the project. The process of determining how to include broadband infrastructure when a certain amount of rehabilitation work has already been completed (e.g., drywall has been replaced) could further delay a project and cause funds to hemorrhage over time.

**HUD’s costs estimates for installing broadband infrastructure are too low**

As the rule’s preamble reflects, it is difficult to specify the exact costs that recipients and owners may incur given the variable technologies that may be used to satisfy the rule’s requirements. However, NAHRO members believe that HUD’s estimate of $200 a unit is too low because it does not include factors that vary across regions, markets and projects that will likely increase the cost of installing broadband infrastructure. These factors may include the construction type, number of units (economy of scale) and labor costs (Davis-Bacon requirements). As an example, for housing authorities located in Cleveland, Ohio and Southern California, many of their housing units were built in the 1930s and 1940s using concrete. If wireless Internet service were found to be too limited or unaffordable in these areas, the process of breaking through concrete to hardwire buildings would be a challenging process that would cost at least $500 per unit, which is an optimistic estimate.

**Additional comments from NAHRO**

HUD should also acknowledge that without additional federal assistance, this proposed rule’s unfunded requirements would not be successful in bridging the Digital Divide. This rule should be accompanied by additional federal funding and support, similar to the elements found in the Administration’s ConnectHOME program: public-private collaborations, broadband connection, technical training, digital literacy, and access to devices. NAHRO believes that additional buy-in
from the private sector is extremely important in achieving the broadband accessibility goals of the Administration. Since the federal government is in the best position to do so, incentives for the private sector to provide broadband connections to housing occupied by low- and moderate-income families should be devised, such as a broadband service tax credit program.

As always, NAHRO is appreciative of the opportunity to comment on this important notice. If I can provide any additional information or clarification regarding our suggestions, please do not hesitate to contact me at jhsu@nahro.org.

Sincerely,

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