November 16, 2012

Regulations Division, Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW., Room 10276
Washington, DC 20410–0500

RE: Docket No. FR-5476-N-02: Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program

To Whom It May Concern:

The National Association of Housing and Redevelopment Officials (NAHRO) is pleased to submit comments in response to the Department of Housing and Urban Development’s (HUD’s) proposed rule amending the regulations governing the Continuum of Care (CoC) program, as created through the enactment of the Housing and Rapid Transition to Housing (HEARTH) Act. NAHRO represents more than 3,100 agencies and over 20,000 individual members and associates. A significant number of our members are involved in administering projects funded through the homeless assistance programs that have been consolidated to form the newly codified CoC program. Because local housing authorities make up a significant portion of NAHRO’s membership, we also note that the current administration has stressed the importance of increasing the participation of these local agencies in communities’ efforts to address homelessness. For multiple reasons, therefore, NAHRO’s members have a vested interest in the outcome of this rulemaking.

Collaborative Applicants, Eligible Applicants, and Subrecipients

NAHRO appreciates that, subsequent to the publication of the interim rule, HUD has clarified that eligible applicants for the FY 2012 CoC competition “include nonprofit organizations, States, local governments, and instrumentalities of State and local governments, and public housing agencies, as such term is defined in 24 CFR 5.100, without limitation or exclusion.” The final rule should include similar language making all PHAs explicitly eligible to act as eligible applicants for new project funding as well as to act as subrecipients of such funding. This language should also ensure that PHAs are able to act as Collaborative Applicants on behalf of Continuums.

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NAHRO further recommends that the language defining eligible applicants and subrecipients be expanded slightly to include those agencies, particularly local redevelopment authorities, that may not meet the regulatory definition of a public housing agency but are nonetheless public entities engaged in the administration of other federal affordable housing programs (e.g., the HOME Investment Partnerships Program and housing initiatives supported by Community Development Block Grant funding) and qualified to administer CoC project funding. (Consider, for example, the Commonwealth of Pennsylvania, where many counties have both housing authorities and redevelopment authorities that, although their governance structures may sometimes be intertwined, are maintained as separate legal entities reflecting state enabling legislation.) NAHRO does not believe there is any barrier in the underlying statute that would prevent HUD from making such an allowance.

Administration of Housing Rental Assistance

As amended by the HEARTH Act, the McKinney-Vento Act states that the “provision of permanent housing rental assistance shall be administered by a State, unit of general local government, or public housing agency.” The interim rule states that “rental assistance may be tenant-based, project-based, or sponsor-based, and may be for transitional or permanent housing.” However, despite acknowledging a distinction between permanent housing rental assistance and transitional housing rental assistance, the interim rule goes further than the statute by requiring that all rental assistance – whether permanent or transitional – be administered “by a State, unit of general local government, or a public housing agency.”

Many Continuums have previously expressed a preference for allowing their partners (recipients and subrecipients), including nonprofits, to directly administer rental assistance, including transitional housing rental assistance. While the statute, wisely or unwisely, does clearly prohibit nonprofit organizations from administering permanent housing rental assistance, the interim rule’s extension of that prohibition to transitional housing rental assistance has the potential to undermine existing practices and, in some communities, could threaten the future participation of effective nonprofit providers. NAHRO urges the Department to craft a final rule that is as flexible as possible regarding the types of entities that may, at the Continuum’s discretion, administer forms of rental assistance – and assistance classified as “leasing” - other than permanent housing “rental assistance.”

Permanent Housing Lease Terms

NAHRO shares the concerns of many stakeholders regarding the interim rule’s requirement that a program participant be a tenant on a lease for a term of at least one year in order for housing to be considered permanent housing. There are several practical reasons for the Department to allow for shorter lease terms. For example, this rigid policy could force recipients and subrecipients to comply with the requirements governing transitional housing if the best and most practical approach to providing permanent housing for a participant involves first housing that participant in a unit for
which a landlord is only willing to accept a lease that is less than one year in duration. And because the interim rule states that the lease must be terminable only by cause, it is also easy to imagine scenarios in which forcing a participant in a rapid rehousing program to commit to a year-long lease risks undermining that participant’s ability to improve their economic standing by accepting employment in a different community.

Case Management

NAHRO is generally supportive of policies that require program participants, as a condition of receiving assistance, to satisfy specific obligations related to case management and supportive services. Regarding the interim rule’s requirement that program participants benefitting from “rapid rehousing” assistance “to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability,” NAHRO suggests that the Department provide recipients with some flexibility to exercise discretion in enforcing this requirement in a manner that remains consistent with the interim rule’s intent. For example, the final rule could instead allow recipients, on a case-by-case basis and in concert with supportive service providers, to determine the frequency with which each participant must meet with a case manager.

Inspections

The interim rule requires the recipient or subrecipient to physically inspect each unit to assure that the unit meets Housing Quality Standards (HQS) before any assistance will be provided. This requirement presents a potential barrier to the success of local rapid rehousing initiatives. NAHRO suggests that the final rule provide recipients and subrecipients with the ability to utilize, at their discretion, broader (but still credible) housing habitability standards, as well as to employ provisional placement policies, followed as soon as possible by inspections, in order to facilitate rapid rehousing.

NAHRO thanks for the Department for the opportunity to submit comments. As always, we remain committed to ensuring the success of federal housing and community development programs in partnership with the Department and our membership.

Sincerely,

Jeff Falcusan
Director of Policy and Program Development