March 9, 2015
Office of General Counsel
U.S. Department of Housing & Urban Development
451 7th St, SW, Room 10276
Washington, DC 20036

Re: Docket No. FR 5743-P-01 Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing and Community Planning and Development Programs

To Whom It May Concern:

On behalf of the 20,000 agencies and members that make up the National Association of Housing and Redevelopment Officials, I am pleased to provide the following comments. Over the years, NAHRO has focused on identifying opportunities for meaningful administrative and regulatory reform to ensure that PHAs can focus their resources on performing the critical tasks that ensure the integrity of their programs. This work has taken on increased urgency, particularly in an era of decreasing appropriations. NAHRO has submitted voluminous recommendations to HUD, and has been disappointed by the slow pace at which these recommendations have been considered. The current proposed rule, however, builds on the commitments made by senior HUD officials in an April 8, 2013 meeting. In addition to the provisions implementing statutory relief recommendations, the proposed rule also includes many of the measures discussed during that meeting. NAHRO appreciates the opportunity to comment on this proposed rule and looks forward to continuing to partner with HUD and Congress to find additional relief measures and flexibilities to allow PHAs to focus their resources on the highest priority needs of their communities.

Proposed Changes Impacting HCV, MFH and PH Program Regulations

Verification of Social Security Numbers (SSN) (§ 5.216)
NAHRO supports the proposal to authorize Housing Choice Voucher, Multifamily Housing, and Public Housing applicant households to become program participants even if a child under the age of six years is added to the household within the six month period prior to the household’s date of admission and that child has not yet been issued a social security number. NAHRO also supports allowing the household a 90 day period from the date of move-in to provide documentation that a
social security number has been added and supports the authority to grant a 90-day extension, aligning the treatment of applicants with that of program participants. NAHRO believes that an applicant family should not be denied housing assistance because of the addition of a child and an inability to obtain a social security number because of circumstances beyond the family’s control. NAHRO notes, however, that this change, though positive, does not offer PHAs any meaningful administrative relief.

**Definition of Extremely Low-Income Families (§§ 5.603, 960.102)**
NAHRO supports the proposed change to the definition of “extremely low-income” families, aligning the regulations with the statutory language contained in the FY 2014 Consolidated Appropriations Act. This definition allows PHAs to serve additional families of extremely modest-means, particularly in small and rural communities.

**Use of Actual Past Income (§ 5.609)**
For certain families and income types, projecting expected income and obtaining the additional documentation necessary to project income places an unnecessary burden on PHA staff time and resources when compared to the minimal annual change in tenant incomes. Further, projecting income can lead to PHA staff errors that result in improper rent determinations. The proposed rule would give PHAs and owners of multi-family housing (MFH) the discretion to calculate income based either on actual past income from the 12 months prior to admission/recertification or projected income. PHAs and MFH owners that elect to use actual past income would simply skip the step of projecting income for the upcoming year. The proposed rule would permit PHAs to choose a different income calculation method for their HCV and PH programs, but would require that the same definition be applied to each participant within the program. Although this provision is intended to simplify the requirements associated with determining a participant’s annual income, PHAs that have availed themselves of this flexibility have found its value to be limited by virtue of the requirement to use the same method for all families and all sources of income.

NAHRO recommends that HUD remove the prohibition in the proposed rule which requires PHAs to either use actual past income or projected future income. PHAs serve diverse family types with diverse forms of income. By restricting PHAs to either use actual past income or projected future income, PHAs do not receive the full streamlining benefit of this provision because PHAs are forced to choose between streamlining annual income reexamination for some participants and not others. For instance, the use of actual past income is most suitable for families with consistent and fixed income sources. However, the use of actual past income does not work well for participants with sporadic income. In addition, this restriction limits a PHA’s ability to streamline annual income reexaminations for families with mixed income types. By allowing PHAs the flexibility to employ both methods, PHAs are able to adjust their processes to the realities of the families they serve. If the goal in redefining annual income is to reduce unnecessary burden on PHAs and reduce improper rent determinations, PHAs must be able to employ both methods to address the differences in every family. Rather than requiring PHAs to choose a single method, the rule should be revised to allow PHAs to dictate which method will be used for each income type. HUD could promote consistency among PHAs by issuing guidance on different income types. For instance, HUD may issue guidance defining “sporadic income” and prescribe if either actual past income or projected future income is most suitable as a verification process.
Likewise, NAHRO does not support using the same time frame for all sources of income and expenses for similar reasons. NAHRO believes that it is unrealistic and unnecessary to restrict the verification process to the same time frame for all sources and expenses. For instance, as EIV is lagged by a quarter, it is unrealistic to expect that all other third-party income verifications will line up perfectly. We believe that restricting all income and expense verifications to the same time period creates more work for PHAs and does not provide a clear streamlining benefit.

Exclusion of Mandatory Education Fees From Income (§ 5.609(b)(9))

In recent years, many institutions of higher education have moved from a tuition-only model to a structure of tuition and fees. To that end, NAHRO supports aligning the treatment of fees with that of tuition by excluding education assistance that covers mandatory education fees from the definition of annual income. Mandatory education fees should include student service fees, student association fees, student activity fees, and laboratory fees. NAHRO believes that deducting these fees will make higher education more affordable for residents, increasing their opportunities to work towards economic self-sufficiency.

Streamlined Annual Reexamination for Families on Fixed Incomes (§§ 5.657, 960.257, 982.516)

NAHRO has long supported a policy to streamline annual reexaminations for families on fixed incomes. For assisted households on fixed incomes such as Social Security, SSI, or SSDI, changes in annual income are generally limited to cost of living adjustments. Since incomes do not change substantially enough to warrant a recalculation of income every year, many agencies would benefit from less frequent reexaminations for families on fixed incomes. It is important to note that the proposed rule would prohibit PHAs that elect to adopt these streamlined reexamination procedures from choosing to use actual past income for income calculations for that program. For reasons mentioned above, NAHRO recommends that HUD remove the prohibition in the proposed rule which requires PHAs to either use actual past income or streamlined annual reexamination of income for families with fixed income sources. By allowing PHAs to use a hybrid of the two provisions adapted to each income type rather than household type, HUD could dramatically increase the value of these streamlining provisions.

The proposed rule would provide a streamlined process for determining the annual income of elderly families and disabled families when 100 percent of the family’s income comes from fixed sources. However, NAHRO strongly supports extending this treatment to households where at least 90 percent of income consists of fixed sources. Legislation has been introduced in the Congress that would make this change, further extending the reach and value of these streamlining provisions.

B. Proposed Changes Impacting HCV and PH Program Regulations

Utility Reimbursements (§§ 960.253, 982.514)

Current regulations require PHAs to reimburse HCV and PH tenants if their utility allowance exceeds their total tenant payment. The regulations require PHAs to provide these reimbursements to HCV tenants on a monthly basis, but do not stipulate how frequently such payments must be made to public housing residents. By virtue of being required to make monthly payments, voucher
agencies are often forced to expend substantial resources to process and mail very small checks. Unfortunately, HUD’s proposal to permit both PH and HCV agencies to make reimbursements that total $20 or less (per quarter) on a quarterly basis instead of monthly would offer extremely limited relief. NAHRO encourages the Department to consider a substantially higher threshold, which would result in many more families being covered by this provision.

*Earned Income Disregard (§§ 5.617, 574.305, 960.255)*

The Earned Income Disregard (EID) is among the most complicated and laborious features of income and rent calculations. While NAHRO supports the idea of incentivizing work, the EID is overly cumbersome to administer, requiring significant resources and resulting in a large share of income and rent calculation errors. NAHRO supports the proposal to limit the number of months a household may receive the EID from 48 to 24. NAHRO also supports the proposal to require that months be consecutive. However, NAHRO is concerned that allowing households to receive the EID multiple times may have unintended consequences, including creating incentives for households to leave jobs when the EID expires.

*Family Declaration of Assets under $5000 (§§ 960.259, 982.516)*

NAHRO supports the proposal to allow PHAs to accept a household’s self-certification of net assets equal to or less than $5,000. NAHRO believes that PHAs should—at both admission and recertification—be authorized to accept this declaration without taking additional steps to verify the accuracy of the declaration. Since net assets equal to or less than $5,000 generate minimal interest income, the administrative burden of verifying the accuracy of the declaration far outweighs the benefit of verifying the potential interest income. By shifting the responsibility for documenting this income to households, HUD can help PHAs to focus their scarce resources on functions that produce greater returns. NAHRO also encourages the Department to consider increasing the threshold beyond $5,000, noting that the risk of unreported income may still be significantly outweighed by the potential administrative savings.

**C. Proposed Changes Impacting PH Program Regulations**

*Public Housing Rents for Mixed Families (§ 5.520(d))*

NAHRO supports the proposal to use the established flat rent applicable to the unit when calculating prorated rents for families that include members both with and without legal immigration status. NAHRO believes such a change provides a more streamlined approach than the current method to determine the maximum rent by establishing the 95th percentile of all Total Tenant Payments (TTPs) for each bedroom size, then taking the full set of TTPs and ordering them from highest to lowest and then identifying the numeral below which 95 percent of TTPs fall. However, NAHRO’s support for this provision is contingent upon appropriate implementation of the flexibilities governing the setting of flat rents that were included in the FY 2015 Consolidated Appropriations Act, but which the Department has not yet implemented.

*Flat Rents (§ 960.253)*

NAHRO opposes the proposed changes to the flat rent regulations, noting that they do not conform with the current statutory requirements as amended by the FY 2015 Consolidated Appropriations Act. NAHRO notes that the Department has yet to issue any implementation guidance to PHAs.
regarding the new flexibilities, despite the urgency with which PHAs have described the need for such guidance.

**Tenant Self-Certification for Community Service Requirements (§§ 960.605, 960.607)**

NAHRO supports the proposal to allow PHAs to accept tenants’ self-certification of compliance with community service requirements. Currently, PHAs expend significant resources obtaining third-party verification of residents’ participation in qualifying activities administered by third parties. This verification requirement imposes a large administrative burden on PHAs with minimal benefit. Tenant self-certification appropriately shifts the burden of documenting compliance with community service requirements to the tenants, who bear the responsibility for complying with such requirements.

**PH Grievance Procedures (§§ 966.52 through 966.57)**

NAHRO supports the expedited public housing grievance procedures detailed in the streamlining rule. NAHRO believes that it is appropriate to establish an expedited grievance procedure for any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA’s public housing premises by other residents or employees of the PHA. Additionally, NAHRO seeks additional ways to streamline grievance procedures while still ensuring that residents are afforded their due process through a fair hearing or other adjudication.

**Limited Vacancies (§ 990.150)**

NAHRO supports the proposed language clarifying PHAs’ eligibility to receive operating subsidy for vacancies up to three percent of the total vacant units on a project-by-project basis. Most private market real estate entities expect vacancy rates in excess of three percent, often using five percent as the underwriting assumption. Because public housing rents are set by statute and are not developed through a process that controls for anticipated expenses, it is critical that HUD provide this minimal level of cushion.

NAHRO remains concerned, however, that such standard is not applied consistently across HUD’s policies, and recommends the Department use the opportunity presented by this rulemaking to rectify the inconsistency. Most notably, HUD should amend the Management Assessment Subsystem (MASS) occupancy standards to align with this operating subsidy threshold. Currently, to receive the full sixteen points for the occupancy sub-indicator, PHAs must maintain occupancy greater than or equal to 98 percent. Since HUD is recognizes that an occupancy rate of 97 percent or higher reflects appropriate management, the MASS standard should be aligned with the operating subsidy standard and should be set at an amount that is greater than or equal to 97 percent.

**D. Proposed Changes Impacting HCV Program Regulations**

**Start of Assisted Tenancy (§ 982.309)**

Currently, voucher agencies are required to process move-ins throughout each month, creating substantial administrative burdens during peak moving seasons. NAHRO supports the proposed rule’s provision that would give PHAs the discretion to adopt policies setting a single date each month when a tenant may move into an assisted unit once the unit is ready for move-in. Such a
policy would allow PHAs to process move-ins in batches, providing a clear streamlining benefit. Although such a policy may discourage landlords in tight rental markets from participating in the HCV program, NAHRO believes that local PHAs are well-positioned to weigh the potential administrative savings with the potential negative effects. By providing PHAs with this authority, HUD would allow PHAs to make tailored decisions that reflect their local market and community needs. While in some rental markets such a policy might limit tenant choice, in other markets it may have little or no effect, and would free up resources that the PHA could spend on other functions, including landlord outreach or mobility counseling.

**Biennial Inspections and the Use of Alternate Inspection Methods (§§ 982.405, 983.103)**

Until July 2014, voucher program regulations required PHAs to inspect 100 percent of their units every year. As a result, PHAs devoted considerable financial resources to inspecting all units, including those that routinely passed inspection in previous years. NAHRO has worked closely with our industry partners PHADA and CLPHA to develop a joint list of regulatory and statutory reform recommendations to present to HUD, which included a provision allowing voucher PHAs to transition to a biennial HQS inspection schedule. This provision was enacted as part of the FY 2014 Consolidated Appropriations Act. In addition to reducing the number of inspections conducted each year, we anticipate that this change to the biennial inspection cycle will be an incentive for participants and owners to maintain their units in compliance with health and safety standards. Local jurisdictions also often have their own inspection requirements, particularly when new units are constructed or substantially rehabilitated. This results in units being inspected twice, once by the city and once by the PHA. In order to further streamline PHAs efforts, NAHRO recommends that HUD include in the final regulation clear language authorizing PHAs to comply with biennial inspections requirements for HCV-assisted properties by relying upon an inspection performed pursuant to such other programs. Eligible alternative inspections should include those conducted pursuant to requirements under the Low-Income Housing Tax Credit (LIHTC) and HOME program or other Federal, State or local housing assistance program, or those conducted by HUD. PHAs should also be permitted to accept the findings of other alternative inspections not specifically listed in the notice.

The proposed rule stipulates that before adopting these inspection findings, the PHAs would be required to submit a certification to the Real Estate Assessment Center (REAC) affirming, under penalty of perjury, that the standard “provides the same or greater protection to occupants of dwelling units meeting such standard or requirement” as would HQS. While NAHRO appreciates the flexibility that this provision provides, NAHRO remains concerned that the proposed rule does not provide PHAs that employ an alternative inspection method not specifically listed in the notice with a safe-harbor provision. If a PHA employs an alternative inspection method not specifically listed in the notice and submits a certification to HUD-REAC affirming its suitability, but HUD-REAC later rejects the finding of the alternative inspection method, the PHA’s SEMAP score would suffer and the PHA would incur additional administrative burden by being required to conduct a HQS re-inspection. In order to receive the full streamlining benefit, HUD-REAC should approve/disapprove a PHA’s certifications before the PHA may employ the alternative inspection method, providing PHAs with assurance that the chosen method is HUD-approved. In addition, where an inspection is conducted under an alternative method results in a finding that a property is out of compliance with the standard particular to that method, HUD should allow PHAs
to rely upon remedial actions taken to bring the property into compliance with the standards under the alternative inspection protocol. Given that HUD-REAC accepts the PHA’s use of the alternative inspection method upfront, HUD should be able to accept that both the inspection standards and remedial actions taken to bring the property into compliance with the standards also “provides the same or greater protection to occupants of dwelling units meeting such standard or requirement” as would HQS. Requiring PHAs to re-inspect units with HQS that fail under an alternative inspection method is redundant and removes the streamlining benefit to employing this provision.

**Inspection of Mixed-Finance Properties**

NAHRO strongly supports allowing PHAs the discretion to adjust the frequency of inspections for mixed-finance properties assisted with project-based vouchers where inspections performed under such other programs take place more or less frequently than biennially. However, in order to align the tenant-based voucher and project-based voucher program, NAHRO believes that HUD should extend the requirement that at least biennially during the term of the HAP contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS, to residents with tenant-based vouchers living in mixed-finance properties.

**Housing Quality Standards Reinspection Fees (§ 982.405)**

NAHRO supports allowing PHAs the option of charging a reasonable fee to an owner if the owner indicates that an HQS violation is fixed, but a reinspection proves that the violation has not yet been fixed. NAHRO recommends that HUD also issue clear guidance on how PHAs may determine a reasonable fee to charge an owner under these circumstances.

**Exception Payment Standards for Providing Reasonable Accommodations (§§ 982.503, 982.505)**

The current regulatory waiver process in HUD’s Office of Public and Indian Housing (PIH) requires PHAs to first send their request to the appropriate HUD Field Office; the Field Office then forwards the waiver request to the appropriate program office at HUD Headquarters along with a Field Office recommendation. This process is overly laborious and should be expedited to ensure that units are not lost to disabled families when owners are not willing to hold them beyond a certain date. NAHRO strongly supports the Department’s proposal to streamline current regulations to allow PHAs to approve, if they so choose, a payment standard of not more than 120 percent of the FMR without HUD approval if required as a reasonable accommodation for a family that includes a person with a disability.

**Family Income and Composition: Regular and Interim Examinations (§ 982.516)**

The proposed rule indicates HUD’s intentions to align the regulatory language as it relates to current voucher regulations, which require PHAs to conduct a reexamination of income whenever a family member with income is added to a family, with public housing regulations, which are less “prescriptive.” However, from the proposed regulatory changes, it is unclear if HUD is intending to no longer require voucher PHAs to conduct an interim examination of income whenever a family member with income is added to a family or if the proposed rule is affording PHAs the discretion to conduct an interim income examination in these circumstances. NAHRO requests that HUD clarify its specific intentions by revising the regulatory language in the final streamlining rule to detail if a voucher PHA is required to conduct an interim examination of income when a family member with
income is added to a family. NAHRO further requests that HUD stipulate that if voucher PHAs are in fact required to conduct such income reexamination, at what point following the change in family composition should PHAs conduct such reexamination.

Utility Allowance Schedules (§ 982.517)
NAHRO has long supported a policy to simplify utility allowance schedules. Utility payment schedules can differ by location, buildings, and by owner and significant staff time is spent determining whether the PHA will make a utility reimbursement and, the amount of the reimbursement. According to a recent report released by Abt Associates on MTW Activities, Innovations in the Moving to Work Demonstration, several MTW agencies have made changes to the way utility allowances are calculated and applied. The goals of the changes have been to make the process less expensive to administer, easier for tenants and landlords to understand, and less prone to administrative errors. Rather than providing separate utility allowances for different bedroom sizes or localities, five PHAs have chosen to provide a single utility schedule for all units. We believe that all PHAs may benefit from similar streamlining flexibility. Therefore, NAHRO strongly supports HUD’s proposed changes to require that utility allowances be based on the size of the unit and either the type of the unit, or a streamlined version of “unit type,” limited to “attached” or “detached.”

NAHRO appreciates the Department’s efforts to identify and implement reforms that will ease administrative burdens on PHAs and other housing providers. Such measures take on increased urgency in the current fiscal environment, wherein affordable housing programs are routinely underfunded. We look forward to working with HUD to continue the progress begun through this proposed rulemaking.

Sincerely,

Tamar Greenspan
Director, Policy and Program Development