February 8, 2024

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: Request for Comments – Docket No. FR-6436-N-01
Changes to the Methodology Used for Calculating Section 8 Income Limits Under the United States Housing Act of 1937

To Whom it May Concern:

We, the undersigned, are committed to addressing the nation's pressing housing needs, including by increasing and preserving affordable housing throughout the country. However, we face serious obstacles in addressing rising housing costs, maintaining affordable housing stock and delivering much-needed new supply.

While we understand that Changes to the Methodology Used for Calculating Section 8 Income Limits Under the United States Housing Act of 1937 (the "Notice") is about income eligibility, the changes that the Department of Housing and Urban Development (HUD) proposes will create additional challenges that affect our ability to provide safe, decent and affordable housing. Operating apartments has become increasingly challenging, as demonstrated by rising expenses. Industry data shows an average expense increase of 9.3 percent for the 12 months preceding June 30, 2023, with insurance, state and local taxes, repairs/maintenance, administrative and payroll costs taking the lead. [1] Other cost drivers causing significant increases, especially in urban markets, are utilities and the provision of security.

It is critical that HUD understand the significant financial headwinds facing housing operators as you consider the Notice. We urge you to consider the impacts of this rulemaking on affordable housing preservation and housing production.

I. BACKGROUND AND SUMMARY OF NOTICE

The United States Housing Act of 1937 (as amended, the "Act") provides for assisted housing for "low-income families" (i.e., families whose incomes are below 80 percent of the area median family income, with adjustments for family size) and "very low-income families" (i.e., families

[1] Yardi Matrix, *Multifamily Expenses Rise As Insurance, Other Costs Soar* (Sept. 2023), https://www.yardimatrix.com/Publications/Download/File/4486-MatrixResearchBulletin-Expenses-September2023.

whose incomes are below 50 percent of the area median family income, with adjustments for family size).

These income limits are often referred to as "Section 8 income limits" because of the historical and statutory links with that program, although the same income limits are also used as eligibility criteria for many other federal programs.

The Notice proposes several changes to the methodology to calculate Section 8 income limits as outlined below:

1. **Maximum Annual Increases**: Under the proposed methodology, the existing caps on annual fluctuation in income limits (i.e., max decrease of 5 percent from the prior year's level and max increase of the higher of (i) 5 percent or (ii) twice the change in the national median family income) would still apply, although the maximum increase would now be subject to an absolute cap of 10 percent. As a result, income limits may be lower in certain years than they would have been under the existing methodology. Also, for some programs where the income limits are also used to set rent-levels for certain housing, the new cap on increases may prevent rents from reaching the level that they would have reached under the current methodology.

2. **National Median Family Income**: Over the years, HUD has used varying definitions/data for the national median family income. Under the proposed methodology, HUD would use unadjusted estimates of national median family income from the Census Bureau's American Community Survey (ACS), as it has done since 2022. By continuing to remove inflation adjustments from its calculation/definition of national median family income, HUD believes it is keeping the calculation in line with its purpose of capturing trends in median family income data addressing survey volatility rather than volatility introduced by accelerating or decelerating inflation. However, for housing providers who need certainty and clarity in the marketplace, it is not clear that using this one-size fits all approach provides any benefit.

3. **Year of ACS Data**: When setting income limits, HUD typically relies on ACS data from three years prior. However, in 2023, HUD utilized data from two years prior (2021) due to atypical data having been released in 2020 as a result of the COVID-19 pandemic. Under the proposed methodology, HUD would preserve this two-year gap between the vintage of the ACS data and the fiscal year for which the income limits are published, subject to limited exceptions. While utilizing more recent data is useful for housing providers, there is still a lag that would potentially impact financial viability of properties for housing providers. This is one of the reasons that inflation has historically been included in the AMI methodology.

As noted and further discussed below, while we understand the goals that HUD is trying to accomplish with the changes set forth in the Notice, the proposed methodology creates significant uncertainty for housing providers and residents. This uncertainty directly impacts housing providers ability to successfully financially operate their properties, and income limits may be insufficient to ensure that all citizens in need of safe and affordable housing are within the income requirements for available affordable housing opportunities. We appreciate that HUD is soliciting industry feedback and urge it to consider the below comments when making adjustments for the final regulation.

II. RESPONSES TO REQUEST FOR COMMENTS

General Comments

Under the proposed methodology, it is unclear how many households will continue to fall within applicable income limits, which in turn makes the impact on the supply of affordable housing unclear. Assistance programs such as Social Security include inflation in their annual cost of living adjustments—according to the Center on Budget and Policy Priorities' analysis of HUD data, one quarter of residents receiving federal rental assistance are disabled; almost one-fifth of residents are 62 years or older. Additionally, changes in the AMI methodology would impact Fair Market Rents, which in turn makes it challenging to predict and plan for the costs of construction and maintenance of affordable housing.

Additionally, the changes that would be implemented by the proposed methodology follow several other recent changes to the methodology (such as using the 2021 ACS data to calculate 2023 income limits). Removing inflation from the AMI methodology does not account for the costs incurred by both housing developers and operators that still rise with inflation, such as labor and material costs, operating expenses, and the increasing cost of insurance and more. This lack of predictability in the cap formula makes financing tougher for developers, which makes less development likely.[2]

It is imperative that housing providers can plan for future projects and that they can understand the potential costs of regular upkeep. Certainty in the market encourages investment in property maintenance and improvement, as owners and investors can confidently allocate resources for upkeep without fear of sudden changes in expenses. Not knowing from year-to-year which tenants may qualify for Section 8, makes it very difficult to plan ahead and secure the appropriate capital needed. When housing providers can more precisely plan, this economic stability creates a more beneficial environment for lenders, developers, and investors, facilitating long-term planning and sustainable growth in the housing sector. Overall, certainty in the market is essential for preserving and furthering affordable housing opportunities across the country.

[2] M. Novogradac and T. Stagg, *Is it Time for HUD to Settle on a Consistent Method to Determine the Income Limits Cap?*, 14 Novogradac Journal of Tax Credits 7 (Jul. 2023), https://www.novoco.com/periodicals/articles/it-time-hud-settle-consistent-method-determine-income-limits-cap.

The proposed methodology limits the ability of owners, lenders, developers, and investors to successfully allocate resources and conduct long-term planning, thereby detracting from the overall preservation and production of affordable housing. This is an overarching issue that HUD should consider when making adjustments to the final regulation.

Rapidly Increasing Operating Costs for Affordable Multifamily Properties

Another overarching concern that provides context for our comments is the burdensome operating cost increases affordable housing providers are experiencing. Due to the rent-restrictions in the programs subject to HUD's income limits, housing providers have very limited ability to offset these costs.

One of the most challenging operational costs that has increased dramatically in recent years is insurance. The lack of affordability and availability of insurance options for property owners, of all types, increasingly puts needed insurance coverage out of reach or limits the ability of property owners to make needed investments in their properties.

Two new data sets show the significant impact of insurance costs on housing operations and affordability. First, the National Multifamily Housing Council (NMHC) released the State of Multifamily Risk Survey & Report in June of 2023 which looked across all types of multifamily housing and showed, on average, property insurance premiums soaring 26 percent year-over year. Yet, it is common to hear of triple-digit property premium increases in certain parts of the country.[3] Other lines of coverage are also troublesome and impacting property operations.

As problematic as this has been across the broader housing ecosystem, the challenge is even more daunting in the affordable and middle-income housing space. A new survey and report released in September, commissioned by the National Leased Housing Association (NLHA), and supported by NMHC, the National Apartment Association (NAA) and other affordable housing organizations, focused on the impact of the current insurance market challenges on affordable housing providers. The survey found that rental housing businesses are facing much higher premiums—nearly one in every three policies had rate increases of 25 percent or more. These conditions have led to negative impacts on both housing providers and renters, with most housing providers indicating that they would take action to mitigate cost increases due to higher insurance premiums by increasing insurance deductibles, decreasing operating expenses, and being forced to increase rent. Insurance is not the only area of property operations seeing an acute increase in costs. A report produced by ndp analytics and commissioned by the National Leased Housing Association, aligns with NMHC research that found a staggering 26 percent of property insurance costs increased over the past year.[4] Specifically, it found that for 2022-2023 renewals, 29 percent of housing providers experienced premium increases of 25 percent or more,

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[3] NMHC, *State of Multifamily Risk Survey and Report* (Jun. 2023), https://www.nmhc.org/news/press-release/2023/nmhc-releases-2023-state-of-multifamily-risk-survey-and-report/.

[4] NMHC, *Increased Insurance Costs for Affordable Housing Providers* (Oct. 2023), https://www.nmhc.org/globalassets/research--insight/research-reports/insurance/ndp-nlha-housing-provider-insurance-costs-report-oct-2023.pdf.

compared to 17 percent the previous year. These increases will be further exacerbated if housing providers have less certainty, and potentially less rent, from Section 8 residents.

Based on data from NAA's Income/Expense IQ, property taxes have surged by an average of 6.5 percent from 2021 to 2022. Notably, cities like Orlando, Norfolk, Va., Minneapolis, Riverside, Calif., and Salt Lake City have experienced double-digit increases. Data from the 2022 Income/Expense IQ also revealed that costs for utilities experienced the highest increase, up 14.3 percent year-over-year. Natural gas and heating fuel came out on top, increasing by 41.8 percent and 19.1 percent, respectively.

Additionally, electricity, internet/wireless and water/sewer all rose by double digits. Total repairs and maintenance were up 13.7 percent with a median cost of $950, driven by appliances, painting/decorating, and general repairs, all of which increased by 20 percent or more. Payroll and other administrative expenses increased by 8.5 percent for the rental housing industry. Labor market challenges have plagued the industry for years, particularly for on-site staff, but the red-hot job market that was kickstarted by the pandemic recovery and stayed strong through 2022, only exacerbated the problems.

HUD's Specific Questions for Comment

Below, we respond more specifically to HUD's six questions for comments included in the Notice.

Question for Comment #1: **Is a cap of ten percent appropriate for HUD's income limit calculation methodology? If not, is there an alternative cap that would be more appropriate? Would such a cap harm planned or in development LIHTC-financed properties (*i.e.,* do such properties assume rent growth in excess of 10 percent)?**

The proposed absolute cap of 10 percent presents several issues. For reasons explained below, we urge HUD to refrain from placing an absolute cap on income limits.

First, as stated above, the new absolute cap of 10 percent may result in income limits being lower in certain years than they would have been under the existing methodology. For example, Novogradac calculated that if HUD used the same methodology as in 2022 and 2023, the 2024 cap would be 14.78 percent.[5] However, under the proposed methodology, the cap can be no higher than 10 percent. This means that families whose income increased by 12 percent would not be within the income limits under the proposed methodology, even though they would have been within the income limits under the existing methodology. As a result, those families may lose eligibility for certain programs. In turn, this may make it more challenging to lease up affordable properties, as the pool of income-qualified tenants will be smaller.

[5] Novogradac, *HUD to Publish Notice Changing Calculation of Income Limit Cap; Sets Annual Maximum Increase at 10%* (Jan. 2024), https://www.novoco.com/news/hud-to-publish-notice-changing-calculation-of-income-limit-cap-sets-annual-maximum-increase-at-10.

Second, the proposed absolute cap also impacts programs for which the income limits are used to set rent-levels for housing. For those programs, the new cap on increases may prevent rents from reaching the level that they would have reached under the current methodology. In other words, the new cap may keep rents lower for participants of certain programs, such as the Low-Income Housing Tax Credit (LIHTC) program. While this may be a benefit to certain program participants, it is likely to harm certain planned and in-development LIHTC properties that assume rent growth in excess of ten percent. Additionally, the combination of lower rent caps and higher expenses could limit LIHTC development over time, which would mean fewer available apartments for those tenants.[6]

We also note that the proposed cap (and the existing caps) are essentially a form of price control, which often leads to negative economic impacts.[7] Like price controls, income limit caps can distort market signals and potentially lead to unintended consequences, such as shortages or surpluses in housing supply or goods and services. Moreover, income limits and price controls can reduce overall economic efficiency by undermining incentives for producers and consumers to allocate resources efficiently. NMHC has extensively outlined the many tenant and consumer harms associated with this.[8]

Finally, we note that many housing providers try to help improve resident outcomes by offering telehealth services and other similar supplemental services. By artificially limiting AMI, the proposed methodology would also impact Fair Market Rents, and could result in a budget shortfall for a property where the housing provider would need to prioritize needed maintenance without being able to offer these important supplemental services.

In sum, the proposed absolute cap could likely translate into lower rent for many properties and significantly fewer income-eligible households – a combination that discourages the production and preservation of affordable rental housing in many areas.[9] While we understand HUD's concern that excessive increases in income limits from year to year could rent-burden some households in certain programs, we urge HUD to recognize that capping increases in income limits may present more problems than solutions.

Question for Comment #2: **In updating its income limits each year, HUD's goal is to allow income limits to rise with prevailing income growth, thus allowing similar numbers of households to be eligible for assistance each year. Many HUD eligible households receive fixed incomes. A number of fixed income programs, such as social security and veteran disability benefits, are adjusted for inflation in a different way than HUD income limits. Have income limits kept pace in your community with other social programs that provide basic income for individuals and households who would also need housing assistance such as elderly, disabled,**

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[6] M. Novogradac and T. Stagg, *supra* note 4.
[7] C. Neely, *Why Price Controls Should Stay in the History Books* (Mar. 2022), https://www.stlouisfed.org/publications/regional-economist/2022/mar/why-price-controls-should-stay-history-books.
[8] NMHC, *The High Cost of Rent Control,* https://www.nmhc.org/news/articles/the-high-cost-of-rent-control/.
[9] M. Novogradac and T. Stagg, *supra* note 4.

and homeless veterans? That is, are individuals or families that would have been eligible in previous years now no longer eligible because income limits have not kept pace in your area? Or are more eligible than had been the case previously?

The proposed methodology creates additional differences between the way that HUD's affordable housing programs and fixed income programs or Supplemental Security Income (SSI) are adjusted for inflation. As a result, there may be additional circumstances where a person is eligible for a fixed income program or SSI but does not fall within the applicable income limits for housing assistance under HUD's affordable housing programs. This outcome creates a number of problems for both residents and housing providers. As one example, the proposed changes to the methodology are very technical and confusing and thus likely to present challenges to a variety of stakeholders researching whether they are eligible for SSI and/or housing assistance. It is far from intuitive that you may qualify for one but not the other.

Question for Comment #3: **In its calculation of income limits, HUD may adjust income limits away from the legislatively defined percentages of Area Median Family Income for places with high and low housing costs relative to Area Median Family Income, or where incomes are otherwise unusually high or low. Currently, beyond the limit on increases and decreases discussed in this notice, HUD also implements high- and low-housing cost adjustments and sets a floor for each State based on the State non-metropolitan median family income (for more information on the current methodology, see *https://www.huduser.gov/portal/datasets/il//il23/IncomeLimitsMethodology-FY23.pdf* as well as HUD's online individual area income limit documentation tool available at *https://www.huduser.gov/portal/datasets/il.html#query_2023*). What other criteria, if any, should HUD use when considering whether to make such adjustments in addition to those in existing policy? For example, should there be a national minimum income limit to reflect a minimum rent needed to operate and maintain rental housing in the lowest cost housing markets? Should the same criteria be used in United States territories?**

Both the current and proposed methodology for calculating income limits are based largely on AMI. HUD raises interesting questions that require significantly more time beyond the comment deadline to property research and address.

Question for Comment #4: **HUD recognizes the tension inherent in the use of an income-based measurement for setting rents, where the costs of operating affordable housing rental properties may grow faster or slower than prevailing incomes, due to a number of factors including, for example, recent rises in insurance costs. For LIHTC property owners, in the past have you raised your rents in LIHTC units to the maximum allowable year-over-year increases? For purposes of HUD better understanding the context of your answers, please indicate the location of the property (*e.g.,* ZIP code, city, or county) to which the answer applies.**

- **If yes, why have you done so, and have the increases been adequate to operate and maintain your property?**

- **In the years where you raised rents to the maximum allowable amount, did you see any changes in the turnover of your units as compared with turnover in years when you did not raise rents to the maximum allowable amount?**
- **If no, what factors do you use in determining how much you raise your rents? In what years have HUD income limit changes been adequate for a LIHTC property to keep up with operating and maintenance costs, and in what years has it not been adequate?**

We agree there is an inherent tension in the use of income-based measurement for setting rents. As stated in the Notice, the costs of operating affordable housing properties can grow faster or slower than prevailing incomes. According to an article published by Brookings in 2020, housing costs are indeed growing faster than prevailing incomes.[10]

Continued economic instability poses a serious threat to the ability of housing providers to leverage the private-market capital necessary to generate needed housing. Higher interest rates have contributed to a period of economic volatility, which is driving up the cost of building new housing, discouraging new investment, and pushing some in our sector out of the market altogether. Increased construction, material and labor costs, significant increases in insurance costs, and state and local property taxes have made the current operating environment extremely challenging. Housing providers are reporting that current economic and regulatory challenges are causing them to cut back significantly on development activities, in some cases, by as much as 50 percent. This slowdown has long-term housing affordability implications.

Although we cannot offer an alternative to the current use of income-based measurements for setting rents at this time, we believe these factors strongly argue against artificially capping the income limits while housing costs remain uncapped.

When property owners set rents, they consider impacts on the tenants, market conditions, financial obligations and physical needs of the property. Housing providers have fiduciary responsibilities to lenders and investors to charge rents that will ensure the long-term viability of the property - and that also ensure that there are sufficient funds available for the maintenance, upkeep and upgrades necessary for long-term preservation and stability of the property.

Question for Comment #5: **Should income limits consider direct measures of costs, such as wages or insurance, instead of, or in addition to, its high housing cost adjustment, recognizing that HUD may currently lack the statutory authority to do so? If so, which specific costs should HUD consider, and which measurements or data would you recommend as a reference?**

Again, HUD asks interesting questions that require additional time beyond the comment deadline to research. In the meantime, we have offered detailed accounts of how the uncapped operating

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[10] J. Schuetz, *To improve housing affordability, we need better alignment of zoning, taxes, and subsidies* (Jan. 2020), https://www.brookings.edu/articles/to-improve-housing-affordability-we-need-better-alignment-of-zoning-taxes-and-subsidies/.

cost increases are currently challenging housing providers as a strong case against the proposed absolute cap on income limits.

Question for Comment #6: **Does HUD's income limits methodology help or hinder the use of Housing Choice Vouchers in LIHTC-financed properties? To what extent does this impact vary for places with high and low housing costs?**

HUD's income limits methodology for Housing Choice Vouchers (HCVs) is different from the methodology for LIHTC-financed properties. We support HCV reforms to incentivize participation of housing providers from the broader housing market, but our members report that the LIHTC and HCV programs generally work well together.

CONCLUSION

Improving housing affordability and availability is essential for the many Americans in need of better housing options. Housing providers must be able to plan for their expenses without yearly disruptions and understand what rent they can count on. Similarly, residents should feel comfortable accessing assistance without fearing that it will no longer be available to them the following year. As drafted, the proposed methodology would result in a host of unintended consequences for both housing providers and tenants as outlined. Again, we thank you for taking the time to consider this critical feedback and urge HUD to consider our comments when making adjustments for any regulations in this area.

Respectfully,

Council for Affordable and Rural Housing
Institute of Real Estate Management
Mortgage Bankers Association
National Affordable Housing Management Association
National Apartment Association
National Association of Home Builders
National Leased Housing Association
National Multifamily Housing Council