

March 31, 2023

Regulations Division  
Office of General Counsel  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> St, SW  
Room 10276  
Washington, DC 20410

Re: Docket No. FR-6320-A-01

To Whom It May Concern:

On behalf of the undersigned organizations, please find our comments on the above-referenced Advanced Notice of Proposed Rulemaking (ANPR). Our collective organizations represent for-profit and non-profit owners, operators, developers, housing cooperatives, property managers, housing agencies and lenders involved in the provision of rental housing, both affordable and conventional.

HUD is proposing to transition to a single Section 8 regulation and a single Housing Assistance Payment (HAP) contract for its Section 8 project-based rental assistance programs. On its face such a proposal appears to be reasonable and well-intentioned, however, HUD clearly has not considered the impact that consolidation would have on longstanding contractual relationships and the future of this scarce resource.

Congress enacted the Multifamily Assisted Housing Reform and Affordability Act (MAHRA) in 1997 to address the expiration of thousands of Section 8 housing assistance payment contracts in an effort to preserve over 1.3 million assisted units. MAHRA provides for the “renewal” of such contracts based on the original contractual agreement in the original HAP. Since its passage, HUD has offered renewal contracts under the current regulatory framework (New construction (“new reg and “old reg”); Substantial Rehabilitation; State Housing Agency; Loan Management Set-Aside (LMSA); Section 202/8; Section 515/8; and Property Disposition).

HUD’s proposal would lead to the loss of thousands of low-income units by creating an incentive for owners to opt-out of the program. Not only is this result contrary to MAHRA, it is inconsistent with this Administration’s focus on increasing (not decreasing) the supply of affordable housing.

We also take issue with particular proposals contained in the notice relating to distributions, reserve for replacement accounts, audit requirements, and periodic Capital Needs Assessments as well as the notion that the renewal process and other policy guidance be promulgated in a regulation. Such proposals will serve as disincentives to pursue long term preservation transactions.

#### Distributions

Owners and HUD have relied on the various forms of HAP contracts for decades as have their lenders and investors. Based upon over 40 years of contract rights and policy, owners have had a reasonable expectation that HUD would continue the policy of not limiting distributions on certain projects. Parties

have relied on such expectations and invested substantial funds into the preservation of these affordable housing communities through acquisition and rehabilitation. Altering the HAP contracts to add a limitation on distributions would be a disincentive for owners to continue operating their properties as low-income housing. As noted, the whole point of MAHRA was to preserve the existing inventory.

### Policy Consolidation

Based on our reading of the ANPR it appears that HUD is proposing to incorporate all existing Section 8 program guidance into a regulation. Consolidation of the regulations along with the incorporation of existing guidance would amount to a substantive change of the regulations which is not in keeping with the MAHRA statute. Further, such action would prevent HUD from adapting its program guidance to exceptional circumstances or changes in law, policy, market conditions and resident considerations. Any change or deviation from the regulation would require a waiver, which is an onerous and cumbersome process, or a formal amendment of the regulation which requires solicitation of public comments, HUD review of the comments, internal review of the regulations by various HUD offices and the review and approval of the Office of Management and Budget. HUD's ability to respond quickly to a policy or legislative change becomes impossible.

Further, HUD's intention to reduce complexity by creating a consolidated HAP contract will add an additional form of HAP. True consolidation would not occur until every HAP contract is renewed, which would be decades as the various forms of HAPs and the underlying regulations would still exist negating any streamlining efficiencies.

### Reserve for Replacements and Capital Needs Assessments

HUD's ANPR suggests that HUD wants to impose a reserve requirement. Clearly, HUD cannot do so under the existing contracts. Most owners maintain reserve accounts already because it is prudent to do so, plus many lenders require owners to demonstrate adequate reserves. We would not support HUD adding a HUD-controlled replacement reserve deposit on top of a reserve deposit already required by the lender as part of the underwriting. We believe HUD should defer to lenders and investors, particularly for preservation transactions. Adding a new reserve deposit requirement would lessen the amount of rehabilitation that could be done, including addressing immediate capital needs and otherwise reduce the scope of work. In some cases, a duplicative reserve requirement could derail a preservation transaction (particularly those with LIHTC).

The imposition of an arbitrary periodic capital need assessment appears superfluous considering that a CNA is already required by conventional lenders, state housing finance agencies, tax credit investors, and the MAP guide. Whether a CNA should be required at a certain time should be subject to several factors, such as when the last rehabilitation work was done, the level of reserve funding, whether items previously identified as necessary improvements or replacement have been addressed, and whether there is oversight by a state agency. An arbitrary timeline for a periodic CNA with no consideration of the circumstances is just a waste of property funds; funds that could be used for general maintenance, support services, etc.

### Audit Requirements

The “old reg” and LMSA contracts do not contain a requirement related to annual financial submissions. Since, 2004, however, HUD has required a purchaser of a project with a HAP contract that does not require a financial submission, to submit an annual audit. It is unclear how many original owners remain with HAP contracts that do not require audit submissions; but why provide another disincentive for an owner to renew its HAP contract?

We urge HUD to abandon this proposal to consolidate the Section 8 regulations and to create a single form of HAP contract. Any perceived benefit will be negated by the impact on the preservation of this scarce supply of affordable rental housing. Thank you for the opportunity to comment.

Sincerely,

Council for Affordable and Rural Housing (CARH)  
Institute of Real Estate Management (IREM)  
Institute for Responsible Housing Preservation (IRHP)  
Mortgage Bankers Association (MBA)  
National Affordable Housing Management Association (NAHMA)  
National Association of Homebuilders (NAHB)  
National Apartment Association (NAA)  
National Association of Housing Cooperatives (NAHC)  
National Housing and Rehabilitation Association (NHRA)  
National Leased Housing Association (NLHA)  
National Multifamily Housing Council (NMHC)  
Public Housing Authority Directors Association (PHADA)  
Stewards of Affordable Housing for the Future (SAHF)