

**Bazon Center for Mental Health Law, Center on Budget and Policy Priorities
National Alliance to End Homelessness, National Housing Trust, National Housing Law Project
National Low Income Housing Coalition, Poverty & Race Research Action Council
c/o National Low Income Housing Coalition**

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC

September 30, 2011

Dear Secretary Donovan:

The organizations listed below have joined together to urge the Department to swiftly move forward with regulations on key issues summarized below so that final rules may be issued before the end of President Obama's first term. We are concerned that all of the important and innovative regulatory planning that has been undertaken at HUD over the past two years may be lost if these regulations are further delayed.

The list below represents regulatory actions that we understand to be in the pipeline, either at HUD or at the Office of Management and Budget. Of the many items on HUD's regulatory agenda, we believe completion of those described below will be of the greatest longstanding benefit to the largest number of low income households.

National Housing Trust Fund

HUD published proposed regulations in November 2010 to implement the NHTF. Many organizations submitted comments by late December. Extremely low income households experience a shortage of six million affordable and available rental housing units. It is imperative that a final rule be issued soon so that rental housing affordable to extremely low income people can be built, rehabilitated, and preserved as soon as funds become available.

Homelessness

The HEARTH Act, enacted with a strong bipartisan majority in 2009, improves the federal response to homelessness in many ways, and those improvements are on hold awaiting these regulations. Particularly urgent are regulations to implement changes to the Emergency Solutions Grants. We understand that some ESG funding from the FY11 appropriation is being held up until the new regulations are issued. Because ESG is formula funding, resources could go out immediately upon completion of the regulations. This is money that is designed to fund rapid re-housing and homelessness prevention programs that were started with HPRP and are now running out of money.

Housing Choice Vouchers

SEMAP

The Section 8 Management Assessment Program (SEMAP) rule is the single most important regulation for the federal government's largest rental assistance program. It has been in effect for 12 years without substantial revision, and without any changes in the last 10 years.

Generally, the SEMAP indicators should be revised to focus on results rather than on compliance with detailed HUD-prescribed procedures, and the scoring of the indicators should be adjusted so that compliance with legal requirements – which should be expected – yields a “standard performer” rating, reserving “high performer” status for public housing agencies (PHAs) that truly excel in their achievement of program goals. Of particular importance, rating on the “deconcentration” indicator should be required for all PHAs that administer vouchers in metropolitan areas, and the measure should be revised to focus on results, especially for families with children living in high opportunity areas.

Portability

The portability rule should be revised to reduce barriers to families seeking to move with voucher assistance to another jurisdiction and to reduce administrative burdens for PHAs.

Project-based Vouchers

The Project-based Voucher rule should be modified to comply with the statutory changes made by Congress in the Housing and Economic Recovery Act of 2008 and to improve the effectiveness of the program based on experience since the rule was issued in 2005.

Consortia

The consortia rule should be revised to facilitate PHAs' combining administrative operations for some or all of their programs. Most importantly, PHAs that administer Housing Choice Voucher programs should be allowed to form a consortium solely for the administration of the HCV program (regardless of whether they also administer public housing or other HUD programs), and HUD should allow all PHAs in an HCV consortium to make single submissions of required documents and data to HUD and to receive a single ACC for HCV funding.

Public Housing

Demolition and Disposition

Annually, about 10,000 units of public housing are disposed of or demolished. Secretary Donovan has written that public housing demolition and disposition applications need to be reviewed more closely, “through the lens of number, location, and affordability of units returning to the inventory,” noting “a decrease in the number of long-term affordable housing units that has resulted in some cases.” Assistant Secretary Henriquez has written that HUD supports many of the rule changes proposed by advocates. We understand that PIH has made considerable progress in drafting revisions to Part 970. Implementing revisions soon is critical to ensure the agreed upon goals of, among others: more meaningful resident consultation; more comprehensive and rigorous HUD review of complete applications; improved standards regarding project obsolescence; and plans for site reuse, replacement housing, and relocation.

Section 3

HUD has stated that it would place new and meaningful emphasis on recipients' Section 3 obligations. Much has been learned since the 1994 rule changes. Advocates have conveyed suggestions to FHEO, such as: replacing the "new hires" loophole with the more meaningful "percentage of all hours worked"; ensuring more immediate access to Section 3 reports; instituting effective enforcement provisions; and requiring coordination with other local agencies to create an effective workforce development strategy. We understand that draft language will be in Departmental clearance imminently. To improve compliance with Section 3, it is crucial to implement regulatory revisions soon.

Assisted Housing

Purchaser Qualifications

HUD should complete rulemaking on purchaser qualifications for multifamily housing, as initiated in 2005 pursuant to the mandate of Section 219 of the FY 2005 Appropriations Act. For program consistency, the rule should cover all purchasers, not just those for disposition sales. The rule should also include a review of any significant deficiencies in the entity's performance beyond the immediate locality of the subject property, and screening criteria regarding the owner's involvement in overleveraged investments, fair housing violations, or violations of residents' rights to organize.

Tenant Resource Network

We urge HUD to release a Notice of Funding Availability for the Tenant Resource Network, which will make grants to assist, inform, educate, and engage tenants of eligible assisted properties with a goal of preserving affordable housing.

Fair Housing

The Affirmatively Furthering Fair Housing Rule

This rule would provide uniform data to HUD grantees as well as standards for assessing AFFH performance in reducing segregation and poverty concentration, and increasing access to opportunity for families in jurisdictions and regions receiving HUD assistance. The rule would also provide enhanced guidance to grantees on preparing their fair housing analysis, and improved procedures for accountability and enforcement.

Disparate Impact Analysis

Although HUD has long recognized the doctrine of disparate impact liability under the Fair Housing Act, the agency's regulations for analyzing and processing discrimination complaints has never been revised to conform to agency practice. Including standards for disparate impact in HUD regulations would give helpful guidance to regional staff in processing complaints and ensure uniformity of application around the country.

Nondiscrimination Based on Disability in Multi-Family Homeownership Projects

This rule would conform HUD's Section 504 regulations to the recently revised ADA rule. It resolves decades of ambiguity about accessibility requirements in HUD assisted projects that include single family homes. Finalizing the rule is particularly timely given the Administration's efforts to optimize the uses of REO properties as affordable, rental housing.

Sexual Harassment

Courts have consistently recognized sexual harassment as a form of discrimination on the basis of sex under the Fair Housing Act, yet HUD has yet to issue final regulations. Regulations will serve as both education and enforcement tools. They are particularly important now, when affordable housing resources are scarce and victims of sexual harassment do not have the option of choosing alternative housing.

We encourage the Department to use its extensive administrative powers to follow through on its commitment to improve the housing programs serving the nation's lowest income households.

Thank you for considering this summary list of high-impact regulatory actions. We request a meeting with you and your senior staff to discuss these priority proposals and what we can do to help HUD in this process. Please contact Linda Couch, NLIHC, 202 662 1530 x 228, to assist in scheduling this meeting.

Sincerely,

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