



April 29, 2020

The Honorable Benjamin S. Carson, Sr., M.D.  
Secretary  
US Department of Housing and Urban Development  
451 Seventh Street, S.W.  
Washington, DC 20410

Re: Response to Notice PIH 2020-05, “COVID-19 Statutory and Regulatory Waivers for the Public Housing, Housing Choice Voucher, Indian Housing Block Grant and Indian Community Development Block Grant programs, Suspension of Public Housing Assessment System and Section Eight Management Asset Program” (the “Waiver Notice”)

Dear Secretary Carson,

The Council of Large Public Housing Authorities (“CLPHA”) and Reno & Cavanaugh, PLLC (“Reno & Cavanaugh”) are pleased to submit comments to Notice PIH 2020-05, “COVID-19 Statutory and Regulatory Waivers for the Public Housing, Housing Choice Voucher, Indian Housing Block Grant and Indian Community Development Block Grant programs, Suspension of Public Housing Assessment System and Section Eight Management Asset Program” (the “Waiver Notice”).

CLPHA is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. We support the nation’s largest and most innovative public housing authorities (“PHAs”) by advocating for policies and programs that most effectively serve low-income residents and provide them with long-term economic opportunities. Our members own and manage nearly half of the nation’s public housing program, administer a quarter of the Housing Choice Voucher (“HCV”) program, and operate a wide array of other housing programs. CLPHA members collectively serve over one million low-income households.

Reno & Cavanaugh has represented hundreds of PHAs throughout the country. The firm was founded in 1977, and over the past three decades the firm has developed a national practice that encompasses the entire real estate, affordable housing, and community development industry. Though our practice has expanded significantly over the years to include a broad range of legal and legislative advocacy services, Reno & Cavanaugh’s original goal of providing quality legal services dedicated to improving housing and communities still remains at the center of everything we do.

On March 18, 2020, CLPHA first wrote to HUD requesting certain statutory and regulatory relief for PHAs in light of the COVID-19 pandemic. On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) into law, authorizing such waivers, and, on April 10, 2020, HUD released the Waiver Notice. We believe that the Waiver

Notice is a significant first step towards providing PHAs with the relief that is desperately needed in these unprecedented times. The COVID-19 pandemic represents a serious threat to the short- and long-term well-being of many vulnerable families in HUD-assisted housing and to the PHAs that own and manage housing and vouchers for nearly 3.3 million households. We appreciate that the Waiver Notice addresses many of the original requests from CLPHA's March 18<sup>th</sup> letter to HUD and allows PHAs to implement waivers with minimal HUD process or other delay. We applaud HUD's recognition of the disruption that the COVID-19 pandemic presents to PHAs and appreciate the open dialog that CLPHA and other industry groups continue to have with HUD's Office of Public and Indian Housing ("PIH") as the COVID-19 pandemic progresses. It is in that spirit that we offer the following specific comments on the Waiver Notice.

**The Periods of Eligibility offered by HUD in the Waiver Notice should be extended to sufficiently account for the ongoing and extended nature of the COVID-19 pandemic.**

We appreciate HUD's stated willingness to reconsider proposed waiver periods of eligibility in the future, but have concerns about what measures HUD will use to inform its decision to extend waivers and the timing with which these decisions and corresponding announcements will be made. Providing PHAs with longer periods of eligibility from the outset, rather than using a wait-and-see approach, allows more certainty and permits PHAs to engage in necessary long-term planning for their ongoing operations.

Although HUD has not yet indicated a willingness to extend the existing waiver periods of availability, we would encourage HUD to seriously consider doing so. While we recognize that there is much unknown about the COVID-19 pandemic, all current CDC partner national forecasting models project the number of COVID-19 deaths in the United States to continue to rise over the next four-week period, which is the longest-range forecast currently available from the CDC.<sup>1</sup> Although we hope to see a rapid decline in the number of COVID-19 cases and look forward to the day when PHAs can resume business as usual, we remain significantly concerned that the periods of availability proffered by HUD fail to account for the on-the-ground realities that many CLPHA members face as a result of the ongoing COVID-19 pandemic. PHAs are struggling to triage the many competing short-term and long-term needs of their agencies and their residents. Even after shelter-in-place orders are lifted, PHAs will be faced with significant backlogs, and it will likely be a significant period of time before PHA operations return to normal. For PHAs that elect to implement waivers pursuant to the Waiver Notice, ensuring the waivers are implemented correctly and consistently will require restructuring existing processes and protocols coupled with significant employee training and oversight. PHAs engaging in such efforts ought to be afforded the benefit of knowing that the waiver relief granted by HUD will be ongoing as part of a long-term strategy to ease the burden on PHAs so that they can focus on the health and safety of their staff and residents rather than part of a short-term, piecemeal approach.

The flexibilities provided in the Waiver Notice are an essential tool for PHAs in responding to the pandemic and ought to remain in place until the national emergency declaration has been suspended

---

<sup>1</sup> CDC, Why Forecasting COVID-19 Deaths in the US is Critical (last updated Apr. 21, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/forecasting-us.html> (last visited Apr. 23, 2020).

and normal PHA operations have resumed. In addition to extending the periods of availability for each waiver, we would also request that HUD provide a safe harbor to PHAs as they work to unwind the implemented waivers and resume normal operations. This safe harbor should provide PHAs with at least an additional ninety (90) days following the suspension of the national emergency declaration concerning the COVID-19 pandemic to resume normal operations and properly document all COVID-19 related activities.

The following are a few examples of areas in which we believe that the existing periods of availability are insufficient. However, please note that the following is not intended to be an exhaustive list. If HUD is not willing to consider a broader extension to the periods of availability as requested above, then we would request HUD consider modifications of the individual periods of availability as described below.

- ***Community Service and Self-Sufficiency Requirement (CSSR) (PH-5):*** As drafted, the CSSR waiver allows PHAs to suspend the community service and self-sufficiency requirement between the date of waiver implementation and the family's next annual reexamination. In practice, this waiver is of limited utility if PHAs do not also implement Waiver PH and HCV-2: Family Income and Composition: Delayed Annual Examination.

Many PHAs are reluctant to enforce CSSR requirements at a time when the vast majority of households remain under shelter in place orders and many community organizations have limited operations and eliminated volunteer opportunities. However, these same PHAs may still have the capacity to conduct annual reexaminations on schedule and in a timely manner. To the extent PHAs are able to continue annual reexaminations as planned, HUD should be encouraging them to do so instead of forcing them to choose between operational continuity and affording families the benefit of this CSSR waiver. By way of example, though the period of availability extends through March 31, 2021, if a family's next annual reexamination is scheduled for May 1 and it is not delayed, the family would only receive the benefit of the waiver for a portion of the month of April and CSSR requirements would resume again on May 1. The CSSR waiver authorized by HUD should provide all PHAs and their assisted public housing families with the needed relief from CSSR requirements through the entire March 31, 2021, period of availability, regardless of the PHAs annual reexamination schedule.

- ***HQS Waivers:*** A majority of the HQS waivers require inspections to be completed by October 31, 2020, and, with respect to new units being placed under HAP Contract, the waivers allow owner certifications in lieu of inspections to be accepted through July 31, 2020. We appreciate the need to ensure that only quality units are placed under HAP Contract and the vital role that inspections play. However, the periods of availability authorized by HUD fail to provide PHAs with the full relief they need. A three-month timeframe, from July 31 to October 31, is simply insufficient for large PHAs to complete all deferred inspections on new units while also addressing the backlog of routine inspections and continuing to inspect new units being placed under a HAP contract. Further, in order to meet that deadline, PHAs would have to begin the planning and contracting process for such inspections in the very near future. Many PHAs rely on private subcontractors to conduct

their inspections, and it is unclear what portion of the previously-existing workforce will remain available for such tasks, especially in light of the limited budgets under which many PHAs operate. In addition, the ability to conduct in-person, in-unit inspections is likely to be hampered for the foreseeable future as supply chain disruptions and increased demand for personal protective equipment (“PPE”) from the medical field impact a PHA’s ability to have staff or other contractors enter units to safely conduct inspections. Instead, HUD should make such HQS waivers available until such time as the national emergency declaration concerning the COVID-19 pandemic is officially suspended and allow PHAs ninety (90) days after such suspension to complete all deferred inspections.

- ***Administrative Plan (HCV-1):*** The existing waiver allows a PHA to amend its Section 8 Administrative Plan on a temporary basis absent Board approval so long as the Board ratifies such actions between June 30, 2020 and July 31, 2020. Given that most PHA Boards meet once per month, this would require the PHA to adopt a resolution at its July Board meeting ratifying any Administrative Plan changes. HUD has offered no guidance for PHAs whose Boards may be unable to meet in the month of July or to PHAs whose Boards fail to ratify actions taken in accordance with the Waiver Notice. Board meetings require significant planning by PHAs, and certain Administrative Plan changes may also be subject to a public comment period. The relationship between a PHA and its Board is an internal governance matter that ought to be assessed by individual PHAs in light of the COVID-19 pandemic to determine when it is safe to meet. HUD should entrust individual PHAs to determine which items ought to be reported to their Board and the frequency with which to do so rather than prescribing such for them. Accordingly, HUD should provide PHAs with at least until October 31, 2020, to receive Board approval for amendments to the Section 8 Administrative Plan pursuant to HCV-1.
- ***Information When Family is Selected – PHA Oral Briefing (HCV-2):*** HUD’s waiver of the oral briefing requirement allows PHAs to conduct a briefing by webcast, video call, or expanded information packet, among other alternate means, through July 31, 2020. PHAs remain committed to ensuring that all communications allow for equal participation and ensures meaningful access to information and materials. However, as employers adapt to a largely remote workforce, we are presented with new ways in which technology can be used to streamline routine tasks and minimize potential COVID-19 exposures. Due to continued limitations in staffing and available PPE, we encourage HUD to consider ways in which oral briefings could be conducted remotely for at least until ninety (90) days following the suspension of the national emergency declaration concerning the COVID-19 pandemic.

**The effective date in the Waiver Notice must be amended to grandfather in PHAs that prioritized the health and safety needs of their staff, residents, and properties prior to April 10, 2020 and withheld pursuit of individual COVID-19 waiver requests in accordance with HUD’s written guidance.**

Under the CARES Act, HUD received “broad authority, in the context of the current public health emergency, to waive statutes and regulations (except for requirements related to fair housing,

nondiscrimination, labor standards, and the environment) for the Public Housing and HCV programs.”<sup>2</sup> Pursuant to that “broad authority,” HUD issued the Waiver Notice on April 10, 2020. We understand that HUD does not believe it has the authority to apply those waivers consistent with the March 27, 2020 effective date of the CARES Act.

It is undisputed that the COVID-19 pandemic required immediate action from PHAs across the country to prioritize the health and safety of residents and their staff. To ensure that such actions would not run afoul of existing statutory and regulatory obligations, PHAs turned to Congress and HUD to request waivers of routine requirements and others that were no longer practical in light of the ongoing health crisis. On March 27, 2020, Congress authorized HUD to issue such waivers, and, three days later, on March 30, 2020,<sup>3</sup> PIH published a set of Frequently Asked Questions (“FAQs”), encouraging “PHAs to take the necessary steps to ensure the health and safety of their staff, assisted families and properties,” and stating in part, “**PHAs should not submit COVID-19 waiver requests until new guidance is issued**” (emphasis in original).<sup>4</sup> In reliance on this statement and pending the release of further instruction and guidance, many PHAs withheld individual waiver requests that would have otherwise been submitted to HUD. Because the Waiver Notice does not authorize any waivers prior to April 10<sup>th</sup>, these same PHAs now risk potential findings of regulatory and statutory noncompliance simply for adhering to HUD’s written guidance. While we do not believe that HUD intended this result and appreciate HUD’s recent statement during an April 17, 2020, webinar that HUD does not intend to pursue enforcement actions against PHAs who may have waived certain statutory or regulatory requirements prior to the effective date of the Waiver Notice, we are concerned that this statement alone does not provide PHAs with the assurances they need as HUD is not the only agency responsible for determining compliance with applicable statutes and regulations. PHAs remain subject to investigation and audit by the Office of the Inspector General or independent audit requirements, and many PHAs involved in public-private partnerships have contractual legal obligations to investors, lenders, developers, and other third parties to comply with all applicable laws and regulations. Default on these obligations can carry significant financial penalties and may affect a PHAs ability to engage in future affordable housing management, preservation, or development endeavors.

We are unaware of any limitation on HUD’s authority to apply the April 10, 2020, Waiver Notice waivers beginning as of the March 27<sup>th</sup> effective date of the CARES Act. Congress did not prohibit HUD from doing so. Instead, Congress provided HUD with “broad authority” under the CARES Act to grant waivers to provide flexibility and assistance to housing providers and their residents. Accordingly, we would respectfully request HUD issue an amendment to the Waiver Notice revising the first sentence of Section 6 as follows:

---

<sup>2</sup> See the Waiver Notice at 2.

<sup>3</sup> We note that HUD has released two conflicting dates as the effective date of the second set of PIH FAQs. HUD’s website and the direct URL used to access the second set of PIH FAQs both suggest a March 30, 2020 publication date (see [https://www.hud.gov/coronavirus/public\\_housing\\_agencies](https://www.hud.gov/coronavirus/public_housing_agencies); see also [https://www.hud.gov/sites/dfiles/PIH/documents/COVID19\\_FAQ\\_PIH\\_3-30-20.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/COVID19_FAQ_PIH_3-30-20.pdf)). However, the cover page accompanying the second set of PIH FAQs reflects a March 31, 2020 date (see [https://www.hud.gov/sites/dfiles/PIH/documents/COVID19\\_FAQ\\_PIH\\_3-30-20.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/COVID19_FAQ_PIH_3-30-20.pdf)). For convenience and consistency, we are choosing to use the earlier March 30, 2020 date as the effective date of the PIH FAQs.

<sup>4</sup> U.S. Dep’t of Housing and Urban Dev., COVID-19 FAQs for Public Housing Agencies, Version 2 (Mar. 31, 2020), [https://www.hud.gov/sites/dfiles/PIH/documents/COVID19\\_FAQ\\_PIH\\_3-30-20.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/COVID19_FAQ_PIH_3-30-20.pdf) (last visited Apr. 23, 2020).

“With respect to the Public Housing and HCV programs, pursuant to the CARES Act, the waivers/alternative requirements are effective for immediate use by PHAs as of ~~the date of this notice~~ March 27, 2020.”

In the alternative, in lieu of the March 27, 2020 date, we would respectfully request HUD authorize the use of waivers as of the March 30<sup>th</sup> date from PIH’s second set of FAQs. PHAs should not be penalized or risk findings of noncompliance for complying with HUD’s written guidance and withholding pursuit of individual COVID-19 waiver requests.

In addition to the above, we would request an official, written statement from HUD confirming HUD’s recent statement from the April 17, 2020, webinar that HUD does not intend to pursue enforcement actions against PHAs for COVID-19 related activities.

**HUD offices should coordinate to ensure PHAs are provided with a consistent, uniform set of waivers that allow for the maximum relief permitted by law.**

We recognize that, in releasing the Waiver Notice, PIH appears to be a leader among other HUD offices with respect to COVID-19 related waivers, which we greatly appreciate. We know this was not an easy task and applaud the leadership of PIH for their commitment to serving PHAs during this time of need. As the current leaders in this area, we encourage PIH to coordinate with various HUD offices so that PHAs are provided with one uniform set of waivers.

For example, waivers related to HQS inspections should apply to all HQS inspections, regardless of whether such are associated with HCV, COC, or other programs. While PIH will allow HCV and PBV units to be placed under HAP contract with an owner certification that no life-threatening conditions exist, we understand that other HUD offices do not yet allow this. Similarly, waivers permitted with respect to tenant income certifications and the use of EIV should apply to all HUD programs requiring tenant income certifications and EIV, not just those required by the public housing or HCV programs.

While we understand that PIH’s authority over other HUD programs is limited, PHAs do not operate in these same silos and are responsible for administering a number of HUD programs across various offices. Having to oversee and administer differing requirements that result from a lack of coordination across HUD programs is unduly burdensome to PHAs who are already operating beyond their maximum capacity. Where there are conflicts between existing waivers and available guidance for the same or substantially the same requirement, HUD ought to provide PHAs with the benefit of the least burdensome waiver to demonstrate compliance with all applicable programmatic requirements.

**HUD should provide PHAs with waivers of additional reporting requirements under HUD’s Voucher Management System (“VMS”) and Cash Management and should clarify or expand its existing waiver of significant amendment public notice requirements to cover significant**

**amendments of Administrative and Continued Occupancy Policies (“ACOP”) and Section 8 Administrative Plans (“Admin. Plan”).**

As mentioned elsewhere in these comments, we appreciate HUD’s efforts to reduce the routine reporting and meeting requirements encumbering PHAs. However, there are a few areas in which CLPHA members continue to request additional flexibility. First, though we acknowledge the importance of timely VMS data reporting for HUD’s purpose of “monthly disbursement calculations, cash reconciliations, trend analysis, storyboards, set-aside funding adjustment calculations and budget projections,”<sup>5</sup> we also note that such reporting may simply not be possible for certain PHAs during this time. Although we understand that HUD’s Financial Management Center will work with PHAs who may be delayed in their VMS reporting, we encourage HUD to think of ways that universal relief could be uniformly provided to all PHAs rather than on an *ad hoc* basis. In the meantime, if individual PHAs contact HUD’s Financial Management Center to request a thirty (30) or sixty (60) day extension of VMS reporting, we would request that such extensions be granted to individual PHAs as a matter of right.

Second, several Moving to Work (“MTW”) agencies have reported concerns with existing cash management reporting requirements, which are not waived under the Waiver Notice and are due on a monthly basis, requiring significant time and resources. We request that HUD waive monthly reporting requirements and instead provide MTW agencies with the ability defer such to a year-end report.

Finally, while we note that HUD has waived the significant amendment process for all significant amendments to the PHA Plan, except for changes related to Section 18, Section 22, and HUD’s Rental Assistance Demonstration (“RAD”) program, we would also encourage HUD to waive all public notice and significant amendment requirements related to changes that a PHA may need in its ACOP and/or Administrative Plan in order to implement waivers pursuant to the Waiver Notice or otherwise respond to the COVID-19 crisis, subject to the same resident notice requirements set forth in Waiver PH and HCV-1 for significant amendments to the PHA Plan.

**HUD should expand Waiver HQS-10: Housing Quality Standards; Space and Security to apply to initial tenancies under HUD’s project-based voucher program.**

While we understand and acknowledge the need to house people in units that are best suited to their household size and needs, this crisis is like no other. Accordingly, we encourage HUD to expand HQS-10 to allow for a waiver of occupancy standards for initial tenancies under HUD’s project-based voucher program where the covered project also contains appropriately-sized project-based voucher units but all such units are presently occupied. We encourage HUD to specify an alternative requirement that the PHA or Project Owner must subsequently transfer the household to an appropriately-sized unit when such becomes available, and we suggest HUD set the period of availability as the duration of the initial lease term, after which the family would be eligible for a Choice Mobility voucher. Similar occupancy standard waivers are already permitted by HUD under

---

<sup>5</sup> U.S. Dep’t of Housing and Urban Dev., COVID-19 FAQs for Public Housing Agencies, Version 3 (Apr. 22, 2020), [https://www.hud.gov/sites/dfiles/PIH/documents/COVID19\\_Round3-FAQs\\_04-22-20.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/COVID19_Round3-FAQs_04-22-20.pdf) (last visited Apr. 23, 2020).

the RAD program in order to facilitate a household's right to return. Expanding HQS-10 in this manner and applying a similar waiver to initial tenancies in project-based voucher units would allow PHAs and project owners to provide additional families with immediate access to housing.

**PHAs seek additional guidance from HUD in the areas of resident notice requirements and rental payment requirements.**

When implementing any waivers or alternative requirements under the Waiver Notice, HUD requires that a PHA "notify residents and owners of any impacts that the waiver and alternative requirement (where applicable) may have on them by whatever means it considers most effective as soon as practicable." However, it is not clear whether HUD requires PHAs to notify all residents and project owners of every waiver the PHA implements or whether such notice is only required for those waivers that impact the individual resident or project owner. Accordingly, we request that HUD clarify, in writing, that PHAs are only required to provide notice to affected residents or project owners. For example, waivers of public housing requirements are unlikely to impact HCV residents and vice versa. Requiring PHAs to extend this notice requirement to all residents and project owners, regardless of whether they are impacted, and follow up with more formal written notice would be unduly burdensome and costly, especially for large PHAs that provide assistance to thousands of households.

Additionally, although not a topic of focus in the Waiver Notice, we understand from CLPHA members that PHAs are experiencing significant pushback from residents and members of the community when attempting to collect tenant rent. Certain communities are encouraging assisted households and PHAs themselves to engage in "rent strikes" or "rent holidays." We believe that HUD's recent guidance on the Eviction Moratorium will be helpful to PHAs in this effort. In addition, we seek clarification from HUD whether, except as explicitly waived in the Waiver Notice, the remainder of PIH Notice 2017-12 remains in effect, especially with respect to the portion of the notice that reads, "HUD does not authorize any PHA-sponsored amnesty or debt forgiveness programs."

**HUD should allow PHAs to use available Public Housing Operating Funds and Section 8 Housing Assistance Payment Funds appropriated in the CARES Act towards the provision of internet services as such are an essential utility required to support or maintain the health and safety of assisted individuals and families, support education, and help PHAs respond to the COVID-19 pandemic.**

As households shelter in place, schools switch to online education, and employees adapt to a largely telework environment, the need for internet connectivity and access in homes is more important than ever. Many libraries, community centers, computer labs, and other public internet access points are no longer available to the general public. Yet, the internet continues to serve as a lifeline, allowing households to access necessary services and safely connect with loved ones while also providing PHAs with a contactless method of communication. We implore HUD to authorize the use of CARES Act funds to facilitate internet access for all public housing and HCV households and to work with CLPHA and its PHA members to develop a long-term solution to bridge the technology



gap and ensure that cost is no longer a barrier to internet access for all public housing and HCV households.

**HUD should work with PHAs to clarify existing personally identifiable information (“PII”) requirements and seek ways to permit PHAs to facilitate access to food, medicine, childcare, and other supportive services for assisted households.**

We understand that HUD does not have the statutory authority to waive requirements of the Privacy Act to protect personally identifiable information (“PII”). However, it is crucial for PHAs to receive guidance regarding PII during this public health emergency as PHAs are struggling to provide services to their most vulnerable residents. We therefore encourage HUD to consider the following actions:

1. HUD could issue guidance and best practices for PHAs on how to facilitate critical services such as food delivery. The current response to this issue in the PIH FAQ is very general and not particularly useful. It would also be very helpful for HUD to create an authorization form for residents that allows them to “opt in” to having PII shared for the specific purposes of COVID-19-related service delivery.
2. HUD could use its existing regulatory authority under the Federal Privacy Act to identify “routine uses” of PII information sharing related to the COVID-19 response that would not require written consent from residents. Under 5 U.S.C. § 552a(b), written consent for disclosure of PII is not required if such disclosure would be for a “routine use,” which means “the use of such record for a purpose which is compatible with the purpose for which it was collected.” Under 5 U.S.C. § 552a(e)(4)(D), HUD is required to publish in the Federal Register “each routine use” for records covered by the Privacy Act and “the categories of users and the purpose of such use.” Using this existing authority, HUD could publish in the Federal Register a new “routine use” for certain demographic information that would facilitate third-party services in response to the COVID-19 pandemic.
3. HUD could encourage OMB to use its existing statutory authority under the Federal Privacy Act to issue guidance and/or regulations for PHAs regarding the disclosure of PII for COVID-19-related services and/or provide HUD with the needed authority to waive or exempt PII disclosure restrictions for COVID-19-related services.

**We encourage HUD to clarify the citations contained in the Waiver Notice and to issue technical corrections as needed to fix errant citations to statutory and regulatory authority.**

While we understand that the statutory and regulatory citations provided in the Waiver Notice are illustrative, there are a few areas in which we would recommend HUD issue technical corrections, as follows:

1. **PH and HCV-1: PHA 5-Year and Annual Plan Submission Dates, Significant Amendment Requirements:** Regulatory Authority should be revised as follows:

- Current Regulatory Authority: 24 CFR §§ 903.5(a)(3), 903.5(b)(3), 903.21.
- Corrected Regulatory Authority: 24 CFR §§ 903.5(a)(3), 903.5(b)(3), 903.13(c), 903.21, 903.23.

24 CFR § 903.13(c) requires a PHA to consider the recommendations of a Resident Advisory Board in preparing a significant amendment, submit a copy of recommendations made by the Resident Advisory Board and PHA responses to HUD, and allows HUD to make good cause findings and delay final approval of the PHA Plan if the Resident Advisory Board consultation requirements are not followed. 24 CFR § 903.23 outlines the process with which HUD reviews, approves, or disapproves a significant amendment to the PHA Plan. Because the waiver allows certain changes that normally trigger significant amendment requirements to be effectuated without completing the significant amendment process, such regulations need to also be waived pursuant to PH and HCV-1.

**2. PH and HCV-3: Family Income and Composition: Annual Examination – Income Verification Requirements:** Regulatory Authority should be revised as follows:

- Current Regulatory Authority: 24 CFR § 5.233(a)(2).
- Corrected Regulatory Authority: 24 CFR §§ 5.233(a)(2), 5.233(b).

24 CFR 5.233(b) imposes penalties for failure to “use the EIV system in its entirety” including “the imposition of sanctions and/or the assessment of disallowed costs associated with any resulting incorrect subsidy or tenant rent calculations, or both.” PH and HCV-3 sets forth alternative requirements for verification of income, and PHAs should not remain subject to penalties for noncompliance if they follow the alternative requirements.

**3. PH and HCV-4: Family Income and Composition: Interim Examinations:** HCV Regulatory Authority should be revised as follows:

- Current HCV Regulatory Authority: 24 CFR § 982.516(c)(2).
- Corrected HCV Regulatory Authority: 24 CFR §§ 982.516(c)(2)-(3).

24 CFR § 982.516(c)(3) reads as follows: “Interim examinations must be conducted in accordance with policies in the PHA administrative plan.” Because PH and HCV-4 allows PHAs to review and adjust their interim reexamination policies pursuant to an expedited PHA administrative plan process under HCV-1, the corresponding regulations at 24 CFR § 982.516(c)(3) should also be waived.

**4. HQS-2: Project-Based Voucher (PBV) Pre-HAP Contract Inspections, PHA Acceptance of Completed Units:** Regulatory Authority should be revised as follows:

- Current Regulatory Authority: 24 CFR § 983.301(b).
- Corrected Regulatory Authority: 24 CFR § 983.103(b).

24 CFR § 983.301(b) relates to determinations of PBV rents and the maximum amount of rent to Owner. Instead, the citation should be to 24 CFR § 983.103(b) which covers pre-HAP contract inspections.

5. **HQS-8: PBV HAP Contract – HQS Inspections to Add or Substitute Units** – Regulatory Authority should be revised as follows:

- Current Regulatory Authority: 24 CFR §§ 983.207(a), 983.207(b).
- Corrected Regulatory Authority: 24 CFR §§ 983.207(a), 983.207(b), Housing Opportunity Through Modernization Act (HOTMA) of 2016: Implementation of Various Section 8 Voucher Provisions, 82 Fed. Reg. 5458 (Jan. 18, 2017).

Section 4(d) of the Housing Opportunity Through Modernization Act (HOTMA) of 2016: Implementation of Various Section 8 Voucher Provisions Notice modifies 24 CFR § 983.207(b) by removing the three-year limit on a PHA’s ability to add or substitute units under a HAP Contract and states “all of the other requirements under 983.207(b) continue to apply.” For the avoidance of doubt, HUD should expand the regulatory authority to also include waiver of the applicable provisions of HUD’s implementation of HOTMA as it relates to a PHA’s ability to add or substitute units in accordance with 24 CFR § 983.207(b).

6. **HQS-9: HQS Quality Control Inspections**: Regulatory Authority should be revised as follows:

- Current Regulatory Authority: 24 CFR § 982.405(b).
- Corrected Regulatory Authority: 24 CFR §§ 982.405(b), 983.103(e)(3).

24 CFR § 983.103(e)(3) requires a PHA to include representative samples of both tenant-based and project-based units when conducting supervisory quality control HQS inspections. Because the requirement that a PHA conduct supervisory quality control inspections is waived, the requirement that such inspections contain a representative sample of both tenant-based and project-based units should similarly be waived.

7. **HCV-2: Information When Family is Selected – PHA Oral Briefing**: Regulatory Authority should be revised as follows:

- Current Regulatory Authority: 24 CFR §§ 982.301(a)(3), 983.252(a).
- Corrected Regulatory Authority: 24 CFR §§ 982.301(a)(1), 983.252(a).

24 CFR § 982.301(a)(3) requires PHAs to explain the advantages of renting in areas that do not have a high concentration of low-income families during a briefing. The correct citation should be to 24 CFR § 982.301(a)(1) which requires the PHA to provide an oral briefing to families selected to participate in a tenant-based program.

8. **HCV-6: Automatic Termination of HAP Contract:** Regulatory Authority should be revised as follows:

- Current Regulatory Authority: 24 CFR § 982.455.
- Corrected Regulatory Authority: 24 CFR §§ 982.455, 983.211(a).

Under 24 CFR § 983.211(a), PHAs are required to automatically remove project-based voucher units from HAP contracts 180 days after the last housing assistance payment to the owner when a family's income increases to the extent that the housing assistance payment is reduced to \$0. To ensure that this waiver applies equally to both the HCV and PBV programs, the regulatory authority should also include the applicable PBV regulatory authority at 24 CFR § 983.211(a).

9. **PH-2: Total Development Costs:** Regulatory Authority should be revised as follows:

- Current Regulatory Authority: 24 CFR § 905.314(c).
- Corrected Regulatory Authority: 24 CFR §§ 905.314(c)-(d).

Waiver PH-2 waives the Total Development Cost ("TDC") and Housing Construction Cost ("HCC") limits to allow public housing funds in a project to exceed applicable TDC and HCC limits by twenty-five percent (25%) without a waiver from HUD. However, the current regulatory authority cited only addresses the waiver of TDC limits. The requirement that a PHA not use capital funds in excess of the HCC limit is not in 24 CFR § 905.314(c), but is instead found in 24 CFR § 905.314(d).

Thank you for the opportunity to submit these comments.

Sincerely,



Sunia Zatterman  
Executive Director  
CLPHA



Stephen I. Holmquist  
Member  
Reno & Cavanaugh, PLLC