



February 28, 2019

The Honorable Richard Shelby
Chair
Committee on Appropriations
304 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

The Honorable Patrick Leahy
Vice Chairman
Committee on Appropriations
437 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

The Honorable Mike Crapo
Chair
Committee on Banking, Housing, and Urban
Affairs
239 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking Housing and Urban
Affairs
503 Hart Senate Office Building
United States Senate
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The Honorable Susan Collins
Chair
Subcommittee on Transportation, Housing and
Urban Development, and Related Agencies
Committee on Appropriations
413 Dirksen Senate Office Building
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The Honorable Jack Reed
Ranking Member
Subcommittee on Transportation, Housing
and Urban Development, and Related
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728 Hart Senate Office Building
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The Honorable David Perdue
Chair
Subcommittee on Housing, Transportation,
and Community Development
Committee on Banking, Housing, and Urban
Affairs
455 Russell Senate Office Building
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The Honorable Robert Menendez
Ranking Member
Subcommittee on Housing, Transportation,
and Community Development
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The Council of Large Public Housing Authorities (CLPHA), the National Association of Housing and Redevelopment Officials (NAHRO) and the Public Housing Authorities Directors Association (PHADA) represent the interests of over 3,000 local housing authorities. We have each become very concerned with recent actions by the Department of Housing and Urban Development (HUD) concerning the contractual relationship between our members and the federal government for the operation of the public housing program in their communities, a contractual relationship established by federal statute. We believe that HUD's actions will fundamentally change that relationship to the detriment of our members, more than 1,000,000 households residing in public housing, and the public housing program.

In December, HUD notified the public of its most recent attempt to implement unilaterally a new public housing Annual Contributions Contract (ACC) and solicited comments concerning the ACC only on narrow issues under the Paperwork Reduction Act (PRA). CLPHA, NAHRO, and PHADA have each submitted comments concerning this new ACC. If you wish, we will be happy to share those comments with you. We wish to raise several very serious deficiencies in this proposed ACC and ask that you take actions to protect the public housing program and local housing authorities from HUD's serious overreach of its regulatory authority. While we raise these comments specifically in the context of the public housing ACC, we believe you should also be concerned that HUD is setting a precedent for making changes to other HUD programs as well.

- HUD has ignored Congressionally mandated rulemaking procedures

We believe that some changes included in HUD's proposed ACC fail to comport with HUD's existing regulations and therefore, that these changes can only be made through the appropriate regulatory process established by Congress under the Administrative Procedure Act (APA). However, HUD is attempting to bypass the APA, which requires HUD to solicit public comments and respond to those comments prior to final rulemaking. Instead, HUD has chosen to use PRA procedures, which were not intended for this purpose, and which fail to satisfy the requirements of the APA.

- HUD's changes to the ACC are not consistent with the contractual relationship Congress established in the U.S. Housing Act of 1937 (Housing Act)

The Housing Act instructs the department to enter into contracts with states or their political subdivisions in order to operate public housing within their jurisdictions. In its proposed revisions, HUD is redefining that relationship by

deeming the ACC to be a grant agreement instead, thereby eliminating existing contractual protections available to local housing authorities. We believe that HUD must comply with the Housing Act's requirement to enter into contracts for the operation of public housing.

- The proposed ACC would give HUD administrative powers not granted by Congress

HUD may impose substantive requirements on housing program participants only through regulations promulgated under statutory authority provided by Congress. Yet, under Section 3 of the new ACC, HUD would also give itself, by contract, the right to impose requirements on local housing authorities operating public housing through, "notices, and HUD-required forms, and agreements." As a result, HUD would no longer have to comply with APA requirements for public notice and comment, and could impose novel, untested, and arbitrary requirements through notices, emails, web site publications, or form instructions without the public vetting required by the APA. If HUD is permitted to assert such authority in the public housing program, then it could do so in other HUD programs as well.

- HUD is using illegitimate authority to change funding for local housing authorities without Congressional authorization

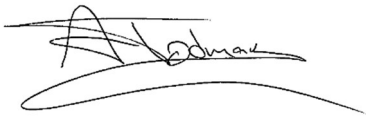
Section 10 of the proposed ACC provides that, "Grant funding may also be terminated, recaptured, withheld, suspended, reduced or such other actions taken in accordance with HUD Requirements." Since these requirements would include notices, required forms and agreements, HUD would have the unilateral ability to eliminate local housing authorities' public housing funding without Congressional authorization.

CLPHA, NAHRO, and PHADA believe that HUD has significantly exceeded the authority Congress has granted to it in these important areas as well as in other provisions of its proposed ACC. The associations believe that the department's efforts to significantly expand its authority without Congressional authorization will be of concern to you.

It will be very helpful to the public housing program and those operating public housing for you to express concerns with the department's efforts to expand its range of authority with a new ACC and ask HUD to withdraw its proposed ACC. Alerting Secretary Carson of your concerns may encourage HUD to reconsider its current courses of action.

In addition, if HUD fails to consider legitimate concerns raised by local housing authorities, by the associations, and by members of Congress, we request that you take steps to bar the department from implementing a new ACC by, for example, forbidding HUD from using appropriated funds for new ACC implementation.

Thank you for your attention and your support. We look forward to cooperating with you to protect the public housing program from HUD's effort to expand its authority without statutory support.



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