June 14, 2017

Regulations Division, Office of General Counsel
U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Room 10276
Washington, DC 20410-0500

Docket No. FR-6030-N-01

Re: Comments on Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda Under Executive Order 13777

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA) appreciates the opportunity to comment on behalf of the state Housing Finance Agencies (HFAs) it represents on HUD regulations that may be outdated, ineffective, or excessively burdensome. Alleviating regulatory burdens will help HFAs, other HUD grantees, and other program partners stretch scarce resources to meet growing affordable housing needs. In addition, HFAs' strong performance as partners with HUD in the administration of many key affordable housing programs shows that they deserve more flexibility and that HUD can entrust to them more program responsibility.

NCSHA is a national nonprofit, nonpartisan organization created by the nation's state HFAs more than 40 years ago to coordinate and leverage their federal advocacy efforts for affordable housing. In addition to our policy and advocacy work, NCSHA provides HFAs education and training and facilitates best practice exchange among them.

HFAs are governmental and quasi-governmental, nonprofit agencies created by their jurisdictions to address the full spectrum of housing need, from homelessness to homeownership. Though they vary widely in their characteristics, including their relationship to state government, HFAs have in common their public-purpose mission to provide affordable housing to the people of their states who need it.

HFAs have a long track record of successfully administering a wide range of affordable housing and community development programs, including the HOME Investment Partnerships (HOME) program, the Housing Trust Fund (HTF), tax-exempt Housing Bonds, the Low Income

Housing Tax Credit (Housing Credit), HUD rental assistance programs, and down payment assistance.

HUD programs are critical to the affordable housing work HFAs perform and achieve tangible results. However, targeted regulatory modifications would strengthen HUD programs by providing state and local administrators more flexibility, streamlining requirements, increasing efficiency, and expanding their reach.

Because these programs are vital to HFAs' ability to meet the housing needs of their states, we are very concerned about the Administration's proposed Fiscal Year (FY) 2018 HUD Budget, which calls for the elimination of several of these critical HUD programs, including HOME and HTF, and significant cuts to others, including rental assistance. We strongly encourage you not to seek elimination of and cuts in these programs but rather to make improvements to them, such as the regulatory proposals below, and to work with Congress on statutory improvements to them.

Furthermore, we believe HUD could improve its administration of several programs simply by ensuring more consistency among HUD field offices in how they interpret program regulations and guidance. Too often, local and field staff apply their own standards and interpretations of HUD regulations and policy, which differ from how other field offices or headquarters understand them, leading to confusion and undermining effective program administration.

With these principles in mind, we recommend that the Administration consider the following regulatory proposals for improving HUD programs.

HOME Investment Partnerships Program

HOME is one of HUD's most important programs, providing states and localities with a flexible resource to meet their most pressing low-income rental and homeownership needs. Since its creation over 20 years ago, HOME has successfully helped finance more than 1.2 million affordable homes, in addition to making homes affordable for hundreds of thousands of families with direct rental assistance. The program is also highly successful in leveraging private and public dollars—for each dollar of HOME funding, $4.20 of private or other funding resources is invested in rental and home buyer projects.

Consolidated Plan and Related Planning Processes (24 CFR 91)

In 1995, HUD created the Consolidated Plan (ConPlan) to serve as a planning document for state or local grantee governments. The ConPlan process and document merge the planning and application requirements of four HUD block grant programs: HOME, the Community Development Block Grant (CDBG) program, the Emergency Solutions Grants (ESG) program,

and the Housing Opportunities for Persons With AIDS (HOPWA) program. The Housing Trust Fund (HTF) interim rule, published in 2015, integrates that program into the ConPlan as well.

ConPlan requirements have grown in recent years, while funding for the HUD programs subject to them have faced severe cuts. This has increased administrative burden for HFAs and other grantees administering these programs. NCSHA encourages HUD to streamline the ConPlan process so that is less burdensome and more meaningful as a planning document. We also urge HUD to streamline the process of completing the Annual Action Plan (AAP) and Consolidated Annual Performance and Evaluation Report (CAPER)--onerous tasks which are often duplicative. Further, we urge HUD headquarters to work for more consistency among local HUD offices in how they interpret and implement ConPlan and related planning regulations and guidance.

Property Standards (24 CFR 92.251)

HUD requires HOME Participating Jurisdictions (PJs) to inspect properties for compliance with state or local habitability codes, if they exist. Only if there are no state or local habitability codes may a PJ use the often simpler and more readily available Uniform Physical Condition Standards (UPCS). For state PJs, this is especially burdensome, as local codes vary significantly from location to location within a state and information about such codes is not always easily obtained. Moreover, local habitability codes may change over time, so states must check to determine if they have changed each time they inspect a property. NCSHA encourages HUD to allow state PJs to inspect all their HOME properties in accordance with UPCS—a single standard that is easy to obtain and apply uniformly across the state.

Minimum Property Standard Exemptions (24 CFR 200.926)

HUD requires PJs to ensure that all properties receiving HOME funds for rehabilitation of any kind meet strict Minimum Property Standards (MPS). We recommend exempting emergency repair from those standards. This would make HOME a more efficient tool to use in disaster recovery situations. Furthermore, we recommend exempting HOME home buyer activities from the MPS requirement. Such housing typically undergoes an inspection by a licensed home inspector. Therefore, it is redundant to also require the PJ to ensure the property meets MPS.

Repayment Requirements (24 CFR 92.252(e))

The HOME repayment regulations go beyond statutory requirements by directing PJs to repay all HOME funds if at any point during the affordability period the property in which those funds were invested falls out of compliance with program rules, regardless of how long the development was in compliance. PJs do their best to recapture HOME funds from noncompliant properties to repay HUD; however, sometimes it is impossible for those properties to repay the funding, and PJs are left with the repayment responsibility. HUD

instead should prorate its repayment requirements to reduce what PJs must return based on how much of the affordability period the property has complied with program rules. Proration would better align the HOME program with the Housing Credit program. If a Housing Credit property falls out of compliance within the first 15 years of the affordability period, the IRS may recapture Housing Credits from investors on a prorated basis.

Utility Allowances in HOME-Assisted Projects (24 CFR Part 92.252(d))

Under the HOME final rule, published in 2013, HOME-assisted projects are no longer permitted to use the utility allowances (UA) established by local Public Housing Authorities (PHA). Instead, HOME regulations require PJs to "otherwise determine the utility allowance for the project based on the type of utilities used at the project" by using either the HUD Utility Schedule Model (HUSM) or a project-specific methodology based on actual usage at the project. This requirement has created processing difficulties and financial burdens for property owners and PJs because the UA methodology requires property owners to annually collect usage data from utility providers specific to their properties in order to adjust the property's UA each year. After the owner has completed its analysis, it must submit it to the PJ for review and approval. This HOME regulation also conflicts with regulations governing other HUD programs, as well as rural housing programs administered by the U.S. Department of Agriculture (USDA). The benefits of the new UA determination requirement simply do not justify the burden it imposes on property owners and PJs. NCSHA urges HUD to return to its previous practice of allowing HOME projects to rely on UAs established by local PHAs.

Income Verification Requirements (24 CFR 92.203)

HOME requires a minimum of eight weeks of pay stubs (if an employee is paid weekly) or two months of source documentation to verify income. NCSHA recommends lowering this requirement to four to six consecutive pay stubs or third-party employment verification to align with Section 8 and Housing Credit policies.

Modest Housing Requirements (24 CFR 92.245(a)(2))

Current regulations permit PJs to use either the Section 203(b) single-family purchase price limits or determine 95 percent of the median purchase price for single-family housing in the jurisdiction for purposes of determining whether homeownership housing is "affordable" and eligible for HOME rehabilitation assistance. HUD has considered whether to abandon the Section 203(b) option and require PJs to use only the 95 percent of median purchase price standard. NCSHA urges HUD to continue to allow PJs the flexibility to use the Section 203(b) limits when they choose. The Section 203(b) limits reflect modest housing for the areas in which they are located and HOME income limits add sufficient protection to target assistance to those who most need it. Flexibility to use either method is especially important in rural areas where median home prices can be so low that the 95 percent standard can prevent homes and homeowners from receiving assistance they desperately need. Moreover, shifting to 95 percent

of median purchase price as the determinant of "modest housing" could prevent PJs from using HOME to help home buyers and homeowners from receiving purchase or rehabilitation assistance they need on many FHA-insured homes.

Tenant Protections and Selection (24 CFR 92.253)

HUD requires owners of HOME-financed housing to serve a 30-day notice before terminating tenancy for any tenant living in a HOME unit. NCSHA urges HUD to modify this requirement by allowing a shorter notice period in extreme cases when the property, staff, or other tenants in the property are in harmful situations due to the behavior of the to-be evicted tenant.

Community Housing Development Organizations (24 CFR 92.300)

The HOME statute requires that each PJ set aside 15 percent of its HOME funding each year for Community Housing Development Organizations (CHDO). However, HOME regulations impose excessively strict and burdensome guidelines regarding CHDO qualifications. Initial CHDO designation requires organizations to submit a lengthy application, which involves gathering multiple signatures, governing documents, housing development history and organizational experience, staff resumes, and board certifications, all of which can amount to 50 pages or more. Once approved, the nonprofit developer must annually update and reassemble its application for the remainder of the affordability period of the housing for which it received CHDO set-aside dollars. These requirements are overly burdensome for both the nonprofit developers and the HOME PJ responsible for reviewing these documents. In many states, there are very few nonprofit developers willing to jump through the hoops necessary to become a CHDO. NCSHA urges HUD to streamline significantly CHDO designation requirements. This would allow more nonprofit entities to qualify.

Furthermore, the new HOME rule imposes an additional requirement that CHDOs employ "paid staff" whose experience qualifies them to undertake HOME-funded activities. HUD has stated that this new requirement will improve the capacity of CHDOs to develop projects, but the regulation has not had the desired outcome. In fact, this onerous requirement has caused many active CHDOs to lose their CHDO designation. PJs should be able to evaluate the capacity of a CHDO as a developer just as they evaluate the capacity of every developer receiving funding under HOME and the many other programs HFAs administer, including the Housing Credit.

Violence Against Women Act Requirements (24 CFR 92.359)

HOME, like many HUD programs, is subject to the Violence Against Women Act (VAWA), which is intended to protect survivors of domestic violence and other crimes from losing their housing assistance. Unfortunately, HUD's VAWA regulations require PJs to

approve external transfers when a tenant seeks to move to another property to be safe. It would expedite this process if HUD were to allow building owners to approve external transfers rather than requiring action by the PJ.

Eligible Activities (24 CFR 92.205(d); 24 CFR 92.252(j))

In comparing HOME-assisted and non-assisted units in a multi-unit development, Sections 92.205(d) and 92.252(j) require comparison of size, features, and number of bedrooms. "Features" is not clearly defined in the regulations and the burden of analyzing all features in the units does not appear to be the most efficient manner of achieving HUD's goal. NCSHA requests that HUD remove the term features from these sections.

Grant-Based Accounting

In 2015, HUD began a new practice of requiring HOME funds to be committed and disbursed using the grant-based accounting methodology—a significant shift from the first-in, first-out (FIFO) accounting methodology to which HOME and other HUD block grants had previously been subject. The new accounting method has proven to be onerous, disincentivizing PJs from generating program income, and creating difficulties as PJs seek to expend funds in a timely manner. We urge HUD to revisit this decision, including the Office of the Inspector General (OIG) interpretation that led to it, and revert back to the FIFO accounting methodology.

Statutory Amendments

The regulatory modifications outlined above are important steps to improve the HOME program, but NCSHA urges HUD also to work with Congress to strengthen HOME further by making several key statutory changes. We commend Congress for including a provision in the FY 2017 omnibus appropriations bill that eliminates the redundant requirement that PJs commit HOME funds within 24 months or face recapture. Unfortunately, because this provision was included in an appropriations bill, rather than authorizing legislation, it only is effective for program funds that would otherwise expire between 2016 and 2019, as directed by the appropriations bill. Congress should make this change permanent, as HOME already has several other more relevant deadlines, including project completion, that are less onerous.

We also urge HUD and Congress to work together to simplify HOME income limits and program rents, eliminate the CHDO set-aside, and revise "grandfathering" provisions for PJs that allow jurisdictions that qualify for below-minimum HOME grants to continue receiving direct assistance.

Housing Trust Fund

NCSHA strongly supports HTF. Targeted mostly to extremely low-income households, this program promises to provide affordable housing and promote independent living and self-sufficiency for our nation's poor families. With its administration entrusted to state agencies, HTF is also part of the strong and proven state delivery system that has successfully administered key housing programs, including HOME and the Housing Credit. State agencies expect that HTF will most often be combined with the Housing Credit and other programs to provide the funds necessary to address the capital and operating costs of properties serving extremely low-income families.

In general, NCSHA urges HUD to work with grantees to streamline HTF regulations so that the program may be better coordinated with other affordable housing production programs, minimize unnecessary administrative burden, and provide state agencies as much flexibility as possible in program administration.

HTF Allocation Plans (24 CFR 93.100)

Each HTF grantee must prepare an annual HTF Allocation Plan showing how it will distribute HTF resources based on the priority housing needs identified in the state's ConPlan. While HTF has only been operational for one year, already the HTF allocation plan process has proven to be cumbersome and often duplicative of other planning efforts. Specifically, NCSHA urges HUD to streamline the allocation plan process, including sections related to the maximum per-unit subsidy (§93.300 (a)) and rehabilitation standards (§93.301). This would relax unnecessary recipient planning requirements and better align HTF with other HFA-administered programs, such as HOME and the Housing Credit.

Affordability Period (24 CFR § 93.302 (d))

HTF's interim rule imposes a 30-year period during which the property must meet the regulation's occupancy and rent restrictions. However, the statute authorizing HTF does not set an affordability period of any length; instead, the HTF statute requires states to select projects based, in part, on the duration of the affordability period. NCSHA recommends eliminating the regulatory 30-year affordability requirement and instead allowing states to determine the appropriate affordability period for HTF dollars according to the project in which they are invested. This will also allow states to align affordability periods with other affordable housing programs they are using to finance specific developments, including HOME and the Housing Credit.

Environmental Review (24 CFR 92.352)

HTF's environmental requirements differ from other HUD programs, most notably HOME. HUD addresses this challenge in Notice CPD-16-14, "Requirements for Housing Trust

Fund Environmental Provisions," but still requires grantees to comply with conflicting or duplicative requirements when HTF is used with other HUD programs subject to environmental review under 24 CFR Part 50 or Part 58. NCSHA recommends that HUD work with Congress and grantees to address the statutory and regulatory provisions related to environmental provisions to better align requirements when HTF funds are used in combination with other HUD funding.

Section 8 Project-Based Rental Assistance

Section 8 Project-Based Rental Assistance (PBRA) is a critical federal housing program, allowing vulnerable low-income households to access decent, safe, and sanitary housing at a rent they can afford. PBRA contracts are administered by HUD and state and local housing authorities. Many contract administrators are Section 8 Performance-Based Contract Administrators (PBCAs) under a program HUD developed to assign some contract administration duties to state and local housing authorities, while maintaining HUD oversight. PBCAs provide direct oversight and monitoring of the financial and physical condition of project-based Section 8 properties. They conduct on-site management reviews of assisted properties; adjust contract rents; and review, process, and pay monthly vouchers submitted by owners.

While there are regulatory modifications that could help improve the PBRA program and streamline its administration, the most important action that HUD could take to protect and preserve this program relates to the upcoming procurement process for rebidding PBCA contracts. Specifically, as NCSHA has communicated to HUD on several occasions, HUD must uphold its statutory duty under the Housing Act of 1937 to contract only with PHAs to administer federal rental assistance contracts. State HFAs, which are considered PHAs for purposes of the Section 8 program, have a proven track record of administering PBRA contracts effectively. As mission-driven entities devoted to the same affordable housing objectives as HUD, HFAs are best-positioned to maximize the effectiveness of a holistic, tenant-oriented, and asset-centric PBCA program.

<u>Rent Comparability Studies (Chapter 9 of the Section 8 Renewal Policy guidebook)</u>

In 2016, HUD implemented a new Rent Comparability Study (RCS) review policy which requires a state-certified appraiser to perform all substantive reviews. This requirement has created an undue financial burden for PBCAs because they incur the costs of the additional reviews and for forwarding every RCS to state-certified appraisers, rather than just RCSs that need professional reviews, as they had done previously. NCSHA recommends eliminating this new policy by allowing PBCAs to perform most substantive reviews and only forwarding RCSs to state-certified appraisers if they deem it necessary.

Mark-to-Market (Chapter 3 of the Section 8 Renewal Policy guidebook)

The Renewal Guide requirement that makes developments with "use restrictions that cannot be unilaterally eliminated by the owner" ineligible for contract renewal Option 1A (Section 3-3B) makes it very difficult for developments with long-term restrictions, such as Low Income Housing Tax Credit Use Agreements, to be eligible for a market rate increase. Such increases help to maintain adequate cash flow to these properties without unduly burdening tenants. While the introduction of Option 1B was helpful in this regard, it only covers a limited number of situations and target populations. We suggest eliminating this requirement, possibly including additional safeguards to ensure long-term preservation and capital investment in the property.

Information Technology Systems

HUD should also improve the information technology systems associated with this program, including the Tenant Rental Assistance Certification System (TRACS) and Enterprise Income Verification (EIV) systems. Further, HUD should evaluate the compliance burden of new data requirements in these systems.

Section 8 Housing Choice Voucher Program

About half of all state HFAs administer the Housing Choice Voucher (voucher) program, which is primarily used for tenant-based rental assistance. Targeted improvements to the voucher program would improve its effectiveness in meeting affordable housing needs.

NCSHA urges HUD to complete implementation of the remaining regulations related to the Housing Opportunity Through Modernization Act (HOTMA), which Congress unanimously passed last year. That bipartisan legislation addresses changes to the federal housing programs that will increase the effectiveness of rental assistance, achieve cost savings, and ease administrative burdens for PHAs and owners.

HUD Mortgage Insurance

HUD requires state HFAs to subordinate their regulatory oversight documents to HUD documents to protect the federal government's position as mortgage insurer. However, HUD's requirements can duplicate existing HFA policies, such as transfer of ownership policies and affordability requirements under Housing Credit regulations. NCSHA recommends HUD consider allowing state documents to be sufficient where present rather than imposing its own requirements.

FHA-HFA Risk-Sharing Program

The FHA-HFA Risk-Sharing Program is an important tool for financing affordable multifamily housing. We support many of the program changes included in HUD's 2016 Proposed Rule, which would improve its functionality, better align it with current industry and HUD policies and practices, and provide greater flexibility for program participants. As NCSHA commented when the proposed rule was published, we believe HUD's proposed rule will make the program even more effective in preserving and producing affordable housing at less risk to the federal government, especially if HUD amends it to take into account the comments below.

Substantial Rehabilitation ((24 CFR 266.200 (b)(2))

Current regulations define "substantial rehabilitation" as work that costs more than 15 percent of a project's value. This definition has resulted in disproportionate and negative impacts on developments in high-cost areas, as rehabilitation activities that would meet the definition of substantial rehabilitation in other areas does not pass the 15 percent threshold in such high-cost areas. We support the proposed rule's provision that would define "substantial rehabilitation" as work that costs more than the FHA base per dwelling unit limit times the applicable high-cost factor and involves the replacement of two or more building systems.

Equity Take-Out Loans (24 CFR 266.200 (c)(2))

HUD's current Risk-Sharing Program regulations permit equity take-out loans for sales to new owners, but not for owners seeking to refinance. We commend HUD for recognizing the adverse effect this limitation has on affordable housing preservation and for proposing to allow equity take-out loans for refinance and acquisition deals, which would align the Risk-Sharing Program with other FHA multifamily programs and industry practice.

Underwriting Flexibility (24 CFR 266.200(d))

Current regulations generally require loan underwriting to use the lower of market or Section 8 rents. NCSHA supports allowing Level I HFAs to underwrite supportive housing developments using contract rents even when they exceed market rents, as permitted for Section 202 developments for the elderly. We recommend HUD extend this flexibility to situations in which the Risk-Sharing Program is used to finance loans under other programs, such as Mark-to-Market, Option 4, and some Option 5 Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA) deals, that permit the same underwriting flexibility for non-Risk-Sharing loans.

Amortization (24 CFR 266.410(e))

NCSHA supports allowing Level I HFAs to insure non-fully amortizing loans. This would allow HFAs to follow standard industry practices and conduct more efficient lending executions.

Securitization

In addition to these regulatory modifications, NCSHA urges HUD to work with Congress to allow Ginnie Mae securitization of FHA-HFA Risk-Sharing loans. This would allow HFAs to make more of these loans at lower interest rates, thus reducing the cost of financing rental housing developments and making it possible to achieve lower rents and reach even lower income tenants. If Ginnie Mae were to securitize FHA-HFA Risk-Sharing loans, HFAs predict the interest rate on the underlying mortgages could be reduced by as much as 200 basis points or 2 percent. This rate reduction would lower rents and potentially reduce the need for and cost of other federal housing subsidies.

Section 811 Project Rental Assistance (PRA) Program

NCSHA calls on HUD to streamline the highly prescriptive Section 811 Project Rental Assistance (PRA) program, authorized in the Frank Melville Supportive Housing Act of 2010 (P.L. 111–374), to improve its delivery to low-income persons with disabilities. HUD guidance on Section 811 PRA has proven to be excessively burdensome to the point which some HFAs and property owners have been disinclined to participate in the program. NCSHA urges HUD to undertake the following steps to improve Section 811 PRA.

Alignment of Section 811 with Other Affordable Housing Programs

Section 811 PRA requirements sometimes conflict with other programs that are the primary funding sources for the developments using the PRA, such as the Housing Credit, Rural Development, a HUD capital resource program, or a combination of these programs. We recommend that HUD allow Section 811 PRA to conform to the requirements of PBRA, the Housing Credit, or whatever funding source is the dominant resource in the development, rather than create additional and burdensome rules and bureaucracy. While the Section 811 PRA is essential for many persons with disabilities to afford these homes, the rental assistance is a small source of funding in comparison to the much greater capital investment from other resources.

For example, Housing Credit income eligibility is based on gross income, whereas the Section 811 PRA program uses adjusted income to determine eligibility. It would be far less burdensome for owners and managers if HUD would allow Section 811 PRA income limits to use gross income levels when used in Housing Credit properties. This simple change would

increase owner participation in the program and would ease the burden on HFAs.

TRACS

HUD requires Section 811 PRA program administrators to use its TRACS system. This antiquated computer system often alienates owners that might otherwise be interested in taking part in the Section 811 PRA program because of the significant investment in technology infrastructure and training required by TRACS. HUD should eliminate the requirement to use TRACS for Section 811 PRA and substitute a more flexible reporting regime to increase private sector participation in the program.

Cross-Cutting Requirements

NCSHA encourages HUD to take a close look at cross-cutting federal requirements to determine whether they might be simplified and made more flexible while still meeting the policy objectives Congress initially sought by instituting them. Requirements under the National Environmental Policy Act, the Uniform Relocation Act, the Davis-Bacon Act, and other statutes all have laudable goals, but can present excessive burdens when they are applied—particularly when considering their cumulative effect—slowing down construction and driving up cost.

Section 3 Economic Opportunities for Low- and Very Low-Income Persons (24 CFR Part 135)

Section 3 was designed to create opportunities for individuals in communities that receive HUD funding to help them become more self-sufficient. However, the requirements for complying with Section 3 remain unclear. No policy changes have been made to the program since 1994 despite HUD publishing a proposed rule to amend Section 3 in March 2015. NCSHA recommends HUD publish Section 3 regulations that clarify definitions and explain when scope and monetary thresholds trigger Section 3, recognizing the need for state flexibility and minimal administrative burden.

Lead Hazard Requirements (24 CFR 25.930)

HUD's lead hazard regulations are critical to ensuring the health and safety of HUD-assisted households. However, the requirement for the evaluation and correction of lead hazards in common areas of multifamily properties receiving an average of more than $5,000 in federal rehabilitation assistance impedes purchasing and rehabilitating affordable owner-occupied units in townhomes or condominiums because of the difficulty in accessing funding to remediate common areas. We suggest allowing units in multifamily housing developments, including townhomes and condominiums, to receive assistance without requiring the evaluation and remediation of hazards in their common areas.

Affirmatively Furthering Fair Housing

In 2015, HUD issued new regulations on Affirmatively Furthering Fair Housing (AFFH). Implementation of the rule for state-level participants in HUD programs effectively has been delayed until HUD finalizes the state Assessment Tool, which states will use to complete their Assessments of Fair Housing (AFH) as required by the AFFH rule. NCSHA has worked with HUD throughout the process to make modifications to its draft state Assessment Tool so that the final version will help states meaningfully plan to affirmatively further fair housing, while being mindful of their capacity, available resources, and jurisdictional authority.

In 2016, HUD published a revised draft of the state Assessment Tool that made significant improvements over the previous draft and incorporated many of NCSHA's recommendations. Despite these changes, the AFH process will remain unreasonably burdensome unless HUD takes further steps to adapt the state Assessment Tool before finalizing it. HUD still vastly underestimates the average time requirement associated with the AFH process for state agencies, especially for larger states. Moreover, we are concerned that the cost of undertaking the AFH will be excessive, likely far more so than the cost associated with the current Analysis of Impediments process. We urge HUD to adopt NCSHA's recommendations to streamline the Assessment Tool and ensure that the AFH provides states with a meaningful framework for their planning process and allows them to fulfill their obligation to affirmatively further fair housing, without creating unnecessary compliance burden and cost.

Federal Housing Administration (FHA)

The Federal Housing Administration (FHA) plays an indispensable role in helping low-income families and other traditionally underserved populations achieve homeownership. In particular, FHA supports sustainable low down payment lending, such as that done by HFAs. This is crucial because one of the biggest impediments to purchasing a home for otherwise responsible borrowers is the cost of affording a down payment. In recent years, nearly three-quarters of HFA loans were insured by FHA.

NCSHA recommends that HUD consider the following changes to FHA policies and guidelines to improve FHA's ability to support affordable homeownership.

FHA Premiums

Given the strong financial standing of the Mutual Mortgage Insurance Fund (MMIF) and the impact of mortgage insurance premium levels on achieving homeownership, NCSHA urges HUD to seriously consider whether FHA should reduce its premiums to make homeownership more affordable.

NCSHA recognizes that the MMIF experienced significant losses in the wake of the housing crisis, prompting HUD to enact five separate premium increases and reenact the life-of-loan policy. In recent years, however, the MMIF has regained its financial footing and is continuing to grow. FHA's capital ratio has also returned to its statutory minimum level and is projected to continue improving in the near future. FHA loan performance has also improved considerably in recent years. Its serious delinquency rate has declined 50 percent since the crisis began and is near a 10-year low.

Despite HUD reducing annual mortgage insurance premiums for most single-family loans by 50 basis points in 2014, FHA premiums remain elevated by historical standards. This results in increased costs that prevent many potential homeowners from purchasing homes. High premiums also may steer higher quality borrowers away from FHA loans to alternative options, depriving the MMIF of a vital source of income.

FHA's decision in 2013 to once again apply annual insurance premiums throughout the life of the entire loan, instead of canceling them after the outstanding principal balance reaches 78 percent of the original balance, has likewise made FHA insurance a less accessible option for working families. As with the higher premiums, this policy also hinders the strength of FHA's book of business because many higher-quality borrowers refinance out of FHA-insured loans to avoid paying the premiums.

FHA Underwriting of Mortgage Credit Certificates

Federal tax law allows HFAs to use their tax-exempt single-family Mortgage Revenue Bond (MRB) authority to provide low- and moderate-income borrowers with Mortgage Credit Certificates (MCCs). MCCs allow borrowers to claim a federal tax credit for a portion of the mortgage interest they pay each year. Specifically, borrowers may claim a credit on up to 30 percent of their mortgage interest costs (50 percent for new construction loans) up to $2,000 each year.

MCCs have proven to be a valuable tool for HFAs in supporting affordable homeownership opportunities. However, FHA's underwriting guidelines currently reduce the value of a borrower's MCC benefit by not allowing the benefit to be considered when calculating their mortgage payment-to-effective income ratio (PTI) and their total debt-to-income ratio (DTI).

Specifically, page 178, Sec.4 a.iii.(A)(1) of FHA's Single Family Policy Handbook (FHA Handbook) states that, when calculating a borrower's monthly mortgage payment for the purpose of calculating their PTI and DTI, mortgagees "may deduct the amount of the Mortgage Credit Certificate or Section 8 Homeownership Voucher if it is paid directly to the Servicer." MCC benefits are not paid to the servicer, but rather directly claimed by the borrower when filing his or her federal taxes, so this provision effectively prevents MCC benefits from being

deducted from a borrower's mortgage payment. This in turn increases the borrower's PTI and DTI ratios and makes it less likely that they will be approved for an FHA loan.

NCSHA requests that HUD amend the FHA Handbook so that the tax savings borrowers realize from their MCCs can be fully incorporated into the FHA underwriting process.

Loan Limits on Title I Mortgages (24 CFR 201)

HUD has not increased the maximum loan limits for FHA Title I Property Home Improvement Loans ($25,000 for one-unit single family homes and $60,000 for multifamily properties) since November 1992 (24 CFR 201.10 and 201.11). Since then, inflation has increased 58 percent ($25,000 is 1992 is worth $43,050 today), diminishing the program's ability to support critical repair projects.

NCSHA recommends that HUD adjust the Title I home improvement loan limits to reflect increased costs in home renovations and repairs since 1992 and index the limits to inflation so that they will reflect increased costs going forward.

FHA Face-to-Face Meeting Requirement (24 CFR 203.604)

FHA regulations require all mortgagees to have a face-to-face meeting with the borrower, or make a reasonable effort to do so, before the borrower is seriously delinquent. "Reasonable effort" consists of at least one letter sent to the borrower by certified mail and at least one in-person visit to the borrower in his or her home. In addition to the regulation, the FHA Handbook (paragraph III.A.2.h.xxi.(A)3, page 595) requires that the individual conducting the in-person visit have the ability to negotiate repayment plans with the borrower.

While this requirement is certainly well-intentioned, in practice it has proven costly and difficult to meet. What's more, it often provides little benefit to borrowers. In order to fully comply with the regulations and FHA Handbook as currently written, mortgagees have to either engage a third party vendor, hire and train representatives who have the capability to negotiate loan modifications, or divert previously trained staff to the task of traveling to contact borrowers at their homes. Hiring and training staff with such credentials can be prohibitively expensive, particularly for public mission-driven mortgagees such as HFAs. In addition, despite mortgagees' good faith efforts to set up face-to-face meetings, home visits are often not successful.

The requirement is also unnecessary in today's housing market. It was instituted at a time when most mortgage servicing and origination was performed locally and when borrowers were less likely to know of the mortgage modification options available to them. Today, most servicers must follow the Consumer Financial Protection Bureau's mortgage servicing rule, as well as various state laws, which require servicers to make a variety of

contacts to delinquent borrowers to make them aware of their options for loss mitigation. HUD itself found the Face-to-Face requirement to be "obsolete" in 2007.

NCSHA strongly recommends that FHA rescind the face-to-face meeting requirement to allow HFAs and other servicers to shift their resources to more effective loss mitigation efforts.

Streamline the Loss Mitigation Process

NCSHA encourages HUD to examine how it can streamline its loss mitigation requirements to allow HFAs and other servicers to more efficiently and effectively assist delinquent borrowers. Currently, the FHA Handbook requires servicers to go through a 12-step process, known as the Loss Mitigation Option Priority Waterfall (III.A.2.iii), to determine whether a borrower is eligible for a loan modification and which option best suits the borrower's needs and circumstance. This long and complex process can be pared back without hindering HFAs' ability to determine which loss mitigation program works best for the borrower.

In addition, the amount of documentation FHA requires from borrowers and mortgagees to enter into a loan modification agreement is unnecessarily burdensome and slows the application process. To cite just one example, if a borrower is no longer employed, they are required to submit their last two federal tax returns, despite the fact that the prior year's return should suffice to document the borrower's income prior to losing his or her job.

Repayment Plan Timelines

When delinquent borrowers with FHA-insured loans are ineligible for FHA's Home Affordable Modification Program (HAMP) because they have already completed HAMP, their loan was funded through MRBs, or the loan has not yet seasoned, HFAs that service loans in-house will offer borrowers forbearance plans to help them keep their homes. Under the FHA Handbook (paragraph III.A.2.k.ii.(A), page 611), such plans cannot exceed six months in duration.

Six months is often an inadequate amount of time to structure a forbearance plan that will meet the borrower's needs. This is especially true for low- and moderate-income borrowers HFAs serve who may lack substantial cash reserves and may be in danger of falling behind on their mortgage payments due to adverse circumstances such as deaths in the family, divorce, or unexpected unemployment. While servicers can request variances for longer repayment plans, the process for applying and securing such variances is cumbersome and servicers have to apply for them on an individual basis.

Given HFAs' public missions and the underserved borrowers they serve, NCSHA urges HUD to amend the FHA Handbook to allow HFAs to offer longer forbearance plans to struggling borrowers.

Timing for Providing Borrowers Loan Modification Agreements

Effective March 1, the FHA Handbook (paragraph III.A.2.K.vi.(F)(5)(A), page 633), requires that servicers provide borrowers with their FHA-HAMP modification agreement at least 30 days before the permanent FHA-HAMP modification goes into effect. Permanent FHA-HAMP modifications go into effect on the first day of the second month after the month following the month when borrowers make their third monthly payment during the Trial Payment Period (TPP).

This requirement is straightforward and simple to comply with in those instances in which a borrower makes their third and final trial modification payment at the beginning of the month. However, when borrowers make their third monthly trial payment near then end of the month, servicers have to scramble to get the loan modification agreement to borrowers by the 30-day advance deadline. This compressed timeline creates needless administrative difficulties for HFAs and other servicers.

Some HFAs have told NCSHA that, in order to ensure that they comply with the 30-day advanced notice, they send borrowers the FHA-HAMP documents after the borrowers pay their *second* trial payment. They are concerned that this could confuse borrowers, who may think they already have been approved for a permanent modification despite still having to make one more trial payment.

NCSHA asks HUD to publish guidance explaining how HFAs and other servicers can comply with the 30-day advanced notice timeframe without having to send borrowers such documents before they have completed their trial modifications.

Property Preservation Costs for Rural Areas

In the unfortunate cases when an HFA or other servicer must foreclosure upon a home, the servicer is responsible for arranging for a number of property preservation and protection activities, including snow removal and changing locks, until the property is conveyed to FHA. FHA typically reimburses servicers for the costs associated with such activities after conveyance.

In rural areas of the country, it is often expensive to hire contractors to perform such activities because there are so few contractors available and they need to travel long distances. The reimbursements FHA offers for such services do not account for these increased costs and are often insufficient to cover the servicer's expenses. In such instances, the servicer effectively pays the difference out of pocket.

As public entities, HFAs cannot afford to consistently realize losses for required property protection and preservation activities without it significantly hampering their affordable homeownership programs. NCSHA recommends that FHA examine its reimbursement rates for property preservation and protection activities to take into account the increased costs of such services for properties in rural areas.

Advance Notice for Repairs to Abandoned Homes

HFAs and other servicers are currently required to send out a notice via mail at least seven days before conducting critical property protection and preservation activities on a foreclosed home, even if they already know the property has been abandoned. This can cause damage to the home as key activities, including rekeying, winterization, and the removal of hazardous materials, are delayed. We recommend HUD remove this advance notice period for those instances in which the servicer has determined that the property is vacant via either inspection or borrower notification.

Proposed Floodplain Standards for FHA-Insured Properties

In October 2016, HUD published a proposed rule (FR–5717–P–01) that would adopt more stringent floodplain requirements for housing funded, endorsed, or insured through HUD single-family and multifamily programs. Specifically, the proposed rule adopts higher elevation standards for all properties prospectively assisted by HUD programs, requiring that they be built at least two feet above the 100-year flood level. The standards are increased to three feet for certain "critical" properties.

As NCSHA stated in our comments on the proposed rule, we appreciate HUD's desire to update its floodplain standards to better reflect current risk levels. However, we are deeply concerned that the proposed standards would hinder the development and rehabilitation of needed affordable housing by substantially increasing costs. We are particularly concerned about the impact the proposed rule could have on development in disadvantaged markets, including many struggling industrial cities that have traditionally been based around bodies of water, rural areas, and those parts of the country where there is a limited amount of developable space.

Before HUD takes any further action on this issue, we ask that it thoroughly examine how new floodplain standards will impact the development and availability of affordable housing and take steps to mitigate the cost associated with compliance.

Thank you for providing NCSHA the opportunity to share our perspectives on the importance of HUD programs and how Congress could modify those programs to improve

results and lessen administrative burden on states. We stand ready to assist you further in any way we can.

Sincerely,

Barbara Thompson
Executive Director