National Council *of*
State Housing Agencies

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RE: Use of Federal Real Property to Assist the Homeless: Revisions to Regulations (Agency Docket No. FR 6119-P-014, 3090-AK46; RIN Nos. 0991-AC14, 2506-AC49; Docket ID No.: HUD-2023-0021-0001)

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA),[1] on behalf of its state Housing Finance Agency (HFA) members, respectfully offers these comments on proposed regulations governing Title V of the McKinney-Vento Homeless Assistance Act as referenced above. NCSHA is a nonprofit, nonpartisan organization created to advance, through advocacy and education, the efforts of the nation's state HFAs and their partners to provide affordable housing to those who need it.

[1] NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

Why Title V Authority is So Important Today

HFAs are the primary providers of public financing, equity, and subsidy for affordable housing in the United States, including various forms of housing for families and individuals experiencing and at high risk of experiencing homelessness. HFAs administer the federal Low Income Housing Tax Credit (Housing Credit), which is the most important tool for constructing and rehabilitating affordable rental housing for these populations.

In addition, 21 HFAs directly administer one or more housing programs authorized by the McKinney – Vento Act and 15 HFAs have recently dedicated fiscal recovery funds authorized by the American Rescue Plan Act to produce permanent supportive housing.

HFAs are facing unprecedented challenges to execute their public mission on behalf of the residents of their states. On the one hand, housing affordability needs in general and for the most economically vulnerable members of our society in particular have increased significantly. On the other hand, construction costs have surged, for reasons ranging from long-running labor shortages to recent disruptions in supply chains and spikes in materials costs.

A report produced for NCSHA by Abt Associates last fall found that HFAs were seeing development cost increases of 30 percent on average compared to the prior year, forcing the agencies to take extraordinary steps to ensure pending developments could remain feasible, in many cases at the expense of future projects for which fewer resources may be available.

HFAs across the country find that developments serving the lowest-income residents, including the recently homeless, are the most difficult to finance and deliver amidst historically high-need high-cost conditions. Any and all opportunities to significantly reduce development costs and expedite construction should be seized.

Title V of the McKinney-Vento Act creates such an opportunity, by providing state and local governments and nonprofit homeless housing providers access to surplus federal property at no cost. The cost of acquiring a site is typically 10 – 20 percent of the total cost of a multifamily development project. Furthermore, the cost of land by law cannot be funded by Housing Credit equity. Thus Title V authority can significantly lower the cost and enhance the feasibility of creating new affordable housing for families and individuals who need it most.

The several hundred Title V affordable housing conversions that have happened since the law was enacted in 1987 represent only a fraction of what is possible. We understand that dozens of potential redevelopments, which could house thousands now living on our streets, are being delayed and denied. For example, analysis by the National Homelessness Law Center indicates that, between January 2020 and March 2023, the federal government identified 65 properties suitable for housing conversions, probably a conservative estimate. Redevelopment applications were submitted for 10 of the properties, but the federal government approved only three.

How the Title V Rules Should Be Improved to Optimize its Potential and Fulfill Congress's Intent

To be clear, we believe the Title V statute clearly envisions and the current Title V regulations already allow the federal government to work on a more timely, flexible, and responsive basis to review and approve applications to convert obsolete federal properties this more productive and deeply needed use. The reasons why that has not been the case for the most part appear to be based on an overly narrow interpretation of the rules, an unnecessarily bureaucratic process for evaluating applications, and an unfortunate lack of priority to optimize Title V authority as the tool Congress intended it to be.

This said, revisions to the rules create a critical opportunity to drive improvements and we appreciate the federal government's willingness to consider them. Regrettably, the proposed revisions miss the mark by a wide margin.

First, the regulations should reflect the reality of affordable housing (and most any real estate) development that securing project financing follows achieving site control – not the other way around, as the Department of Health and Human Services (HHS) has chosen to implement them. A report by Catholic Charities USA on affordable housing conversions summarizes the matter: "First and foremost, without site control, the project is merely a good idea. Most funding sources will not accept an application without proof of site control." Indeed, most state HFAs typically require evidence of conditional site control before approving an application for Housing Credits.

Effectively requiring entities seeking to convert obsolete federal property into desperately needed affordable housing to have project financing in place as a precondition to obtaining control of the site has no basis in law or regulation. In practice, it almost certainly prevents potential Title V redevelopments from being proposed, let alone considered by the federal government. And it seems plainly at odds with explicit commitments in both the White House "Housing Supply Action Plan" and the Interagency Council on Homelessness "Federal Strategic Plan to Prevent and End Homelessness," each of which cite Title V authority as an opportunity for additional federal action.

HFAs understand as well as any government agency the imperative to hold development entities accountable for commitments made with respect to public assets. The agencies also understand the public sector's need to protect its interests in the event developers are unable to deliver on their commitments. We believe the federal government can do both with respect to Title V transfers by providing conditional site control to developers while they finalize their financing commitments, including applications for Housing Credits. In many cases, such conditional commitment may expedite the final approval or project financing.

At the same time, HHS should be willing to accept conditional commitments of equity, subsidy, and financing from HFAs and other sources as sufficient evidence of ability to secure funds for the purposes of obtaining site control of Title V properties. The regulations should be revised to make this explicit.

The regulations also should be revised to allow more time for redevelopment after HHS has provided site control to an applicant for redevelopment as homeless housing. The regulations currently require applicants to place properties into use within 12 – 36 months.

Even before Covid and the onset of higher inflation and supply chain disruptions, affordable multifamily developments typically took several years to deliver *after obtaining financing and site control*. State HFAs hear frequently from developers that projects are taking even longer today, for reasons totally beyond their ability to control.

The federal government has consistently recognized this reality and work to address it effectively during the Biden-Harris administration. HUD and Treasury/IRS, for example, have extended various regulatory timetable several times to accommodate longer-than-envisioned development timetables. HHS should revise the Title V rules to provide that redevelopments that are not placed in service within eight years of the applicant obtaining site control may be transferred to another applicant or taken back by the federal government if one does not exist.

Finally, to further the comment above about elevating the Title V opportunity within the federal government to help address our nation's homelessness crisis – making it a priority for HHS – we urge that the revised rules provide meaningful opportunities for developers of transferred properties to address potential agency concerns before punitive sanctions are imposed. HHS' overly aggressive posture not only undermines the success of redevelopments in process, it also may impose a chilling effect on others from applying to convert additional obsolete federal properties.

The reality is that affordable housing development is an imperfect, sometimes "messy" process, even in optimal conditions. HFAs find that working flexibly and proactively with developers more often than not leads to a resolution of agency concerns and the ultimate outcome of a completed project. We recommend the revised rule provide that in instances of *substantial noncompliance* relating to surplus property transfers, HHS may impose, after providing a reasonable opportunity to cure to both the transferee and any investors or lenders providing financing to the approved use, applicable sanctions at its discretion.

State HFAs stand ready to assist HHS and its federal partners in the Title V disposition process in optimizing this critical authority and significant opportunity.

Sincerely,

Stockton Williams
Executive Director