NCSHA

National Council *of*
State Housing Agencies

January 31, 2020

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-187-N-01

Re: Proposals to the White House Council on Eliminating Regulatory Barriers to Affordable Housing Under Executive Order 13878

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA)[1] appreciates the opportunity to submit comments to the Department on "Federal, State, local, and Tribal laws, regulations, land use requirements, and administrative practices that artificially raise the costs of affordable housing development and contribute to shortages in housing supply" with respect to the above-referenced Executive Order of the President.

NCSHA is a national nonprofit, nonpartisan organization that represents the nation's state housing finance agencies (HFAs). State HFAs have collectively delivered $450 billion in financing to make possible the purchase, development, and rehabilitation of more than 7 million affordable homes and rental apartments for low- and middle-income households.

NCSHA commends the Trump Administration for its efforts to reduce regulations that needlessly impede the ability of the private sector, community-based groups, and state and local governments from meeting the nation's worsening affordable housing needs. Prior Republican and Democratic administrations have expressed similar commitments — yet regulatory barriers and burdens have only increased, at all levels of government.

We recognize that many of the most significant opportunities for housing regulatory reform are at the state and local levels and we appreciate the administration's expressed interest in encouraging states and cities to act. A growing number of state HFAs are engaged in such efforts.

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[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.

There are also opportunities to cut costs, contradictions, and complexities from federal regulations that will lead to more affordable housing. Our recommendations specify those that we believe will have significant near-term payoffs. They provide direction to help this administration do what others have not: take substantive actions to reduce red tape that will directly lead to more affordable housing.

Recommendations to the Treasury Department and the Internal Revenue Service

Low Income Housing Tax Credit

Since its creation as part of the Tax Reform Act of 1986, the Housing Credit has been the most effective and efficient response to our nation's affordable housing supply needs, financing the production and preservation of nearly 3.5 million affordable rental homes in urban, suburban, and rural communities in every state. It is by far the most successful tool for encouraging private investment in affordable rental housing, helping families, seniors, veterans, and people with disabilities access homes they can afford.

Because Congress designed the Housing Credit such that program administration is devolved to state authority, it does not bear many of the regulatory complexities and one-size-fits-all disadvantages other programs that are more centrally administered suffer. Moreover, many of the regulatory barriers faced by the Housing Credit are local in nature, such as local impact fees, permitting and zoning requirements, and construction delays caused by NIMBYism.

However, there are several federal regulatory obstacles negatively impacting Housing Credit production, as outlined below, on which we urge the White House Council on Eliminating Regulatory Barriers to Affordable Housing to act.

Housing Credit Compliance Monitoring Regulations (26 CFR 1.42-5)

In February 2019, the U.S. Treasury (Treasury) and IRS issued a final rule to amend the Housing Credit compliance monitoring regulations, imposing an immense new regulatory burden on state Housing Credit agencies by significantly increasing the unit sample sizes states must monitor for compliance. States have until January 1, 2021, to implement the new requirements.

The new rules represent a massive unfunded mandate on the states by the IRS. They will result in fewer state funds for housing; higher fees on builders and owners; less oversight of older, needier properties — all with disproportionate harm to rural states.

Housing Credit agencies have reported to both NCSHA and the IRS that they will incur significant costs to comply with the new requirements due to the need to hire more compliance staff to undertake the increased work load. On average, the number of units states will need to monitor will increase by 50 percent, though in some states the number of units they will need to monitor will more than double.

State agencies have already begun raising compliance monitoring fees on owners, the effect of which eventually will be borne by the residents in the form of higher rents. Moreover, fee increases in many cases will not be sufficient to fully cover the associated costs of this new burden; thus, many agencies expect they will be forced to divert resources, that would otherwise more efficiently and effectively support affordable housing, to help pay for the increased compliance monitoring burden on state agencies. This will undoubtably reduce the resources available to produce and preserve affordable housing.

The most vulnerable communities and properties will suffer the most, and rural areas are hit especially hard. We do not see a justification for such a radical departure from the previous practice, and IRS has not indicated an uptick in Housing Credit noncompliance that would support these changes in the compliance monitoring regime.

It is important to note that IRS never issued a proposed rule preceding the publication of the final rule making these changes, and instead relied on cursory mention of the potential for action in the preamble of interim regulations issued in 2016. Thus, stakeholders did not have adequate opportunity to provide comment on the policy changes before they became effective.

Last year, NCSHA sent Treasury and the IRS a detailed letter explaining our concerns about the new requirements, and we have since met with officials from IRS and Treasury to make our case. Specifically, we have urged IRS to reissue the final rule as a proposed rule and push back the implementation date to allow NCSHA and other stakeholders the opportunity to provide comments and work with Treasury and IRS on a feasible alternative.

We understand Treasury and IRS may be considering regulatory action in response to NCSHA's recommendations. Time is of the essence as some state agencies have already had to begin adjusting their budgets as best they can for staffing needs assuming the current regulations will stand.

Recommendation: Treasury and IRS should rescind the final regulations published February 26, 2019, amending the Housing Credit compliance monitoring regulations. They should reinstate temporary regulations that had been in place previously under Rev. Proc. 2016-15 until Treasury and IRS, through a public comment process, can achieve a more feasible and less costly compliance monitoring regime.

The Housing Credit Student Rule (Audit Technique Guide IRC Section 42 and Guide for Completing Form 8823)

When Congress created the Housing Credit, it sought to ensure that Credits were not used to develop dormitory housing for full-time students. However, the Housing Credit "student rule" prohibiting such developments is overly complex, prevents nontraditional-aged individuals living in Housing Credit properties from going back to school to further their education, and differs substantially from the rule impacting students in HUD-financed housing. This means properties that have both Housing Credit and HUD funding must comply with two different student rules.

Legal experts with whom NCSHA has discussed our concerns believe a statutory change is needed to fix many of the problems with the student rule. However, there is one area in which a modification to the existing Housing Credit regulations related to students could provide much-needed simplification, even before the enactment of a more sweeping statutory change. Specifically, both the IRS Audit Technique Guide IRC Section 42 and IRS Guide for Completing Form 8823 state, "A unit is not a low-income unit if it is occupied entirely by full-time students at qualifying educational organizations *for five or more months during a calendar year in which the taxable year of the taxpayer begins*…"

This means an individual who is no longer a student, but who had been a student for five or more months during the calendar year in which taxpayer's taxable year began, still counts as a student for purposes of the Housing Credit until the start of the next calendar year. It is difficult for applicants and management alike to understand why someone who is no longer enrolled at an educational institution would still qualify as a student for the purpose of this program.

Recommendation: Treasury and IRS should modify the Audit Technique Guide for Section 42 and the Guide to Completing Form 8823 so that an individualis considered a student only if they are enrolled in an educational institution at the time of application and/or at the time of the owner's annual recertification of continuing program compliance.

Planned Foreclosure of Housing Credit Properties (No applicable regulation)

By law, a Housing Credit property must remain affordable for at least 30 years. The first 15-year period is regulated through the statutory penalty of recapture of tax credits; the second 15-year period is regulated through an extended use agreement administered by the state Housing Credit agency (which in most instances is the state HFA).

Under current law, if a property is acquired by foreclosure during the second 15-year period, the affordability restrictions terminate unless the Secretary of the Treasury determines that the acquisition was part of an arrangement to terminate those restrictions and not a legitimate foreclosure. In practice, it is very difficult for the Treasury Secretary to make such determinations about individual properties. To our knowledge, a Treasury Secretary has never done so, despite state Housing Credit agencies providing extensive documentation of these occurrences.

Due to this practice, Housing Credit properties are leaving the regulated affordable housing inventory sooner than Congress intended. The premature loss of these units reduces the affordable housing supply, requiring more costly construction or rehabilitation of other units just to keep pace.

Recommendation: Treasury should delegate to state Housing Credit agencies the responsibility of determining when a foreclosure is undertaken for the express purpose of terminating affordability restrictions.

The Housing Credit 10-Year Rule (No applicable regulation)

Housing Credits are not available for the acquisition of properties placed in service during the 10 years prior to that acquisition. This rule dates to 1986, when Congress was concerned about "churning" real estate to take advantage of property appreciation due to the accelerated depreciation rules enacted in 1981.

Decades later, with longer depreciation rules in effect, the 10-year rule is no longer relevant. Instead, the rule unnecessarily prevents the acquisition of properties that would otherwise be eligible for preservation.

Congress partially addressed this in 2008 by providing an exception to the 10-year rule for certain federally or state-assisted buildings. However, the IRS has not issued regulations implementing this change, thus few transactions have tried to utilize this exception. In this case, the lack of regulatory guidance is adding burden to the program.

Recommendation: The IRS should promulgate regulations implementing the statutory change.

Relocation Expenses in Rehabilitation Expenditure (Audit Technique Guide IRC Section 42)

When an occupied building is rehabilitated, it may be safer, more expedient, and more efficient if tenants are relocated while the work is being done. IRS has taken the position that the cost of relocating tenants is deductible and therefore cannot be capitalized. In the case of the Housing Credit, the result of this position is that relocation costs cannot be considered direct costs of the rehabilitation and thus cannot be covered by Housing Credit equity. This makes rehabilitation far more difficult and time consuming, which adds unnecessary costs, while sacrificing resident safety. In some instances, this makes the rehabilitation untenable.

Recommendation: The IRS should modify its position on relocation costs for purposes of the Housing Credit program.

Casualty Losses (IRS Revenue Procedure 2019-49)

Current IRS policy provides relief from recapture and credit loss to the owner of a building that suffers a reduction in qualified basis due to a casualty if the casualty is the result of a presidentially declared disaster, allowing up to 24 months from the time of the casualty for the property to be back in service. However, if a property suffers a casualty loss unrelated to a presidentially declared disaster, the property must be restored and back in service by the end of the calendar year to avoid credit recapture, regardless of when the casualty loss event occurred.

For example, if a property suffers a fire in December that causes units to be unavailable for occupancy as of the end of the calendar year, the owner will face a loss of credits, even though the property was in service for the majority of the year. Conversely, if a property suffers a fire in January and units are unavailable for most of the year but back in service by December 31, the owner will not face a loss of credits under current IRS policy.

Moreover, IRS does not make any exceptions to the 24-month time limit for properties suffering casualty losses due to presidentially declared disasters. In some instances, such disasters are so devastating that 24 months is not sufficient time to rebuild. In other instances, successive events that are not presidentially declared disasters occur, significantly hampering recovery efforts from the initial disasters; for example, properties burned down in wildfires that devastated all the surrounding infrastructure, or areas hit by hurricanes in successive years. In these instances, greater flexibility is warranted.

Recommendation: The IRS should amend its policy to owners of buildings that suffer casualties toward the end of the calendar year with more time to restore their properties and ensure they are rented to qualified tenants without suffering penalties. Guidance should also provide a process for allocating agencies to request from IRS an extension of the 24-month relief period for extreme events.

Mortgage Revenue Bonds and Mortgage Credit Certificates

State HFA-issued Mortgage Revenue Bonds have helped more than 3.2 million low- and moderate-income families purchase affordable homes. MRBs enable creditworthy working families with modest incomes and limited capacity to obtain the necessary down payments to access homeownership. In a typical year, as many as 60,000 families buy their first homes with MRB mortgages. The median income of an MRB borrower in 2018 was $47,619, approximately 25 percent less than the national median.

Federal tax law also allows HFAs to use their MRB authority to provide low- and moderate-income borrowers with Mortgage Credit Certificates (MCCs). An MCC allows a borrower to claim a federal tax credit for a portion of the mortgage interest they pay each year. Specifically, a borrower may claim a credit on up to 30 percent of their mortgage interest cost (50 percent for new construction loans) up to $2,000 each year. HFAs have helped more than 250,000 additional homeowners by converting some of their bond authority to Mortgage Credit Certificates (MCCs).

<u>Time Period for Updated Income Limits for Qualified Mortgage Bonds (IRS Revenue Procedure 2019-21)</u>

IRS annually releases Revenue Procedures allowing HFAs and other MRB and MCC issuers to utilize HUD program income limits for the most recent fiscal year (FY). The Revenue Procedures also prohibit issuers from using the HUD income limits that were established two fiscal years prior. In recent years, the IRS has not included in this guidance a transition period providing HFAs with time to adjust to the new limits. In fact, Revenue Procedure 2019-21, which establishes the HUD income limits for FY 2019, was published May 2, 2019, yet appears to technically negate the use of FY 2017 income limits retroactively back to April 24.

Requiring HFAs to adopt the new limits immediately is untenable and could cause HFAs to have to cancel previous commitments they made to purchase loans. It could also cause borrowers, who were depending on using MCCs to help manage their purchasing costs, to have those MCCs rescinded just before their closings. Such uncertainty discourages lenders from working with HFAs, hurting the HFAs' ability to fulfill their affordable homeownership missions.

Recommendation: The IRS should clarify that HFAs and other MRB issuers have a grace period to adjust their programs to the new income limits, and that any MRB loans or MCCs financed using the newly expired limits during that period will remain in compliance with federal tax law. IRS should also allow longer transition periods for loans or MCCs in high-cost housing areas.

Mortgage Fees and Effective Interest Rates for MRB Loans (IRS Reg. §6a.103A-2(i)(2)(ii)(A))

The referenced regulations limit the effective interest rate on MRB-financed mortgages to no more than 1.125 percent over the yield rate being paid to the bond's investors. When calculating a loan's effective interest rate, the originator must take into account all points and fees charged to the borrower, including origination fees.

The purpose of this provision is to ensure that MRBs are used to fulfill their public-purpose of subsidizing affordable low-interest mortgages for low- and moderate-income borrowers. However, when factoring in the routine fees associated with the home purchase process, the effective interest rate makes it difficult for lenders to generate revenue on MRB-financed loans. This diminishes lenders' interest in originating MRB loans and participating in HFA programs.

Recommendation: The IRS should amend Reg. §6a.103A-2(i)(2)(ii)(A) so that origination fees, points, and other fees associated with obtaining a mortgage and charged to the borrower are counted toward the effective interest rate of an MRB loan to the extent allowable under the limits the Federal Housing Administration has placed on such fees for loans insured by its Title II homeownership loan programs. This will allow originators to earn reasonable revenue on HFA program loans while still protecting borrowers from excessive fees.

Covered Investments Under the Special Yield Reduction Rule (§1.148-5(c)(3)(i)(A))

An HFA or other municipal bond issuer will often invest funds from a bond issuance that have not yet been applied toward the purpose of the bond as a means of generating more resources and helping to defray any unexpected costs. Federal tax law restricts the yield that issuers can earn on these investments as a means of ensuring that entities do use tax-exempt financing simply as a means of raising funds to invest. If issuers go over the yield limit, they have to pay the overage to Treasury.

The IRS requires that any investment of revenue generated directly from a bond sale be subject to absolute yield restrictions, meaning that revenue can only be invested in instruments with a maximum return at or below the yield limit. Any funds indirectly tied to the bond sale do not have meet such absolute yield restrictions, but have to pay any excess yield to Treasury. §1.148-5(c)(3)(i)(A) of the Internal Revenue Code enumerates the permitted investments that may use yield reduction payments at the end of their temporary periods instead of absolute yield restrictions.

One investment currently subject to absolute yield restrictions is the use of bond "replacement proceeds." Given that these replacement proceeds are not revenue from the bond sale, we see no reason to subject them to the absolute yield requirement, particularly when any excess yield can simply be paid to Treasury.

Recommendation: Treasury and IRS should amend the referenced regulation regarding "Yield and Valuation of Purpose Investments" at §1.148-5(c)(3)(i)(A) to add "(e)(5)" to the list of permitted investments that may use "yield reduction payments" at the end of their temporary period instead of absolute yield restriction. This would allow issuers to invest their funds more flexibly and potentially increase the amount of revenue they can generate for their affordable housing activities. Any excess over the bond yield would still be paid to IRS.

Extending the MCC Revocation Period (26 CFR § 1.25-4T(m))

Current IRS regulations require that any revocations of MCC authority (or reconversion back into MRB authority) be made within the calendar year in which the election was made. The current time limitation is too short for some issuers to change their MCC election if the program is either over- or under-subscribed.

Recommendation: The IRS should extend the revocation period to facilitate program planning and flexibility in the management of an agency's bond volume cap.

MCC Public Notice Requirement (26 CFR § 1.25-7T(a))

Before issuing MCCs, issuers have to provide 90 days' public notice of their intention to do so. HFAs typically receive little, if any, public comment on these notices. This long notice period hinders HFA efforts to convert unused bond authority to MCCs before it expires at the end of the year.

Recommendation: The IRS should shorten the MCC public notice period to two weeks. This would be consistent with the public hearing requirements for private activity bonds under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

MCC Lender Reporting Requirement (26 CFR § 1.25-8T(a))

When a mortgage borrower receives an MCC, the lender is statutorily required to report annually to the IRS certain information about the loan. The requirement is duplicative because IRS already requires the MCC issuer to report the exact same information to it. Therefore, the IRS is receiving the same information from two different sources. Lenders find this reporting requirement burdensome, and it reduces their interest in participating in MCC programs.

Recommendation: The IRS should repeal the lender reporting requirement for MCC programs.

Recommendations to the Department of Housing and Urban Development

Single-Family Mortgage Insurance Programs

The Federal Housing Administration (FHA) plays an indispensable role in helping low-income families and other traditionally underserved populations achieve the dream of 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 a down payment. In recent years, nearly three-quarters of HFA loans were insured by FHA.

FHA Underwriting of Mortgage Credit Certificates

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 PTI and DTI, the mortgagee "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 their 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 they will be approved for an FHA loan.

Recommendation: FHA should amend the FHA Handbook where cited so that the tax savings a borrower realizes from their MCC can be fully incorporated into the FHA underwriting process.

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

FHA regulations require the mortgagee 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 their home. In addition to the regulation, the FHA Handbook (page 595, paragraph III.A.2.h.xxi.(A)3) 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. Despite mortgagees' good faith efforts to set up face-to-face meetings, home visits are often not successful.

In order to fully comply with the regulations and FHA Handbook as currently written, mortgagees have to either engage third-party vendors, hire and train representatives to negotiate loan modifications, or divert previously trained staff to visit borrowers in their homes. Hiring and training staff with such credentials can be prohibitively expensive, particularly for public mission-driven mortgagees such as HFAs. Simplifying or eliminating this requirement would allow HFAs and other servicers to shift their resources to more effective loss mitigation efforts.

The requirement is also unnecessary in today's housing market. It was instituted at a time when most mortgage servicing and origination were performed locally, and when borrowers were less likely to know 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 meeting requirement to be "obsolete" in 2007.

FHA recently examined this issue further and determined the face-to-face meeting requirement is statutorily obligated. However, we were encouraged to hear from FHA staff that they are looking for ways they can amend their guidelines around this requirement to reduce the logistical burden it places on servicers, including the possible use of teleconferencing and other technologies to satisfy the meeting requirements.

Recommendation: FHA should issue guidance that will allow servicers to utilize new technology to more efficiently and effectively meet the face-to-face meeting requirement.

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 the borrowers forbearance plans to help them keep their homes. Under the FHA Handbook (page 611, paragraph III.A.2.k.ii(A)), 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 the 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 a death 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.

Recommendation: FHA should amend the FHA Handbook to allow HFAs to offer longer forbearance plans to struggling borrowers.

Timing for Providing Borrowers with Loan Modification Agreements

Effective March 1, the FHA Handbook (page 633, paragraph III.A.2.K.vi.(F)(5)(A)), requires that the servicer provide the borrower 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 a borrower makes 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 a borrower makes their third monthly trial payment near then end of the month, the servicer has to scramble to get the loan modification agreement to the borrower 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 they comply with the 30-day advanced notice, they send borrowers the FHA-HAMP documents after the borrowers pay their *second* trial payments. They are concerned 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.

Recommendation: FHA should 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.

<u>Property Preservation Costs for Rural Areas</u>

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, such as removing snow and changing locks, until the property is conveyed to FHA. FHA typically reimburses the servicer 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 do not account for the 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 continually realize losses for required property protection and preservation activities without it significantly hampering their affordable homeownership programs.

Recommendation: FHA should revise reimbursement rates for property preservation and protection activities to take into account the increased costs of ordering such services for properties in rural areas.

Multifamily Mortgage Insurance Programs

<u>FHA-HFA Risk-Sharing Program</u>

The FHA-HFA Risk-Sharing Program is an important tool for financing affordable multifamily housing. It provides credit enhancement to HFA bond and debt issuances through FHA mortgage insurance, resulting in lower borrowing costs. The Risk-Sharing program outperforms HUD's traditional FHA multifamily mortgage insurance programs and generates net revenue for the federal government. Thirty-seven HFAs have financed more than 1,617 loans, totaling nearly $11.2 billion in principal and supporting more than 180,710 affordable rental homes. FHA-HFA Risk-Sharing commitment volume is now 13 percent of total FHA commitment volume. These loans also represent more than one in four (26 percent) Housing Credit units financed under all FHA insurance programs.

Using the Risk-Sharing program is significantly easier and a more streamlined option than the Multifamily Accelerated Processing (MAP) program and other traditional FHA options. For example, the MAP program generally involves longer processing times, higher transaction costs, and adherence to 875 pages of MAP guidance — all of which limit its utility. The Risk-Sharing program also saves significant FHA staff time, because the lenders are responsible for underwriting and processing the mortgages and resolving any problems. Although HUD monitors the lenders for adherence to their underwriting standards and their continuing financial strength, this is much less staff-intensive than FHA's responsibilities for MAP loans.

Federal Financing Bank Financing

Risk-Sharing program loans currently do not have access to Ginnie Mae financing, as do virtually all other FHA-insured multifamily loans. To support more multifamily lending and provide a source of capital for smaller loans, especially in rural areas, HUD and Treasury created a special financing program a few years ago through which Treasury's Federal Financing Bank (FFB) purchased HFA Risk-Sharing loans. FFB financing of Risk-Sharing loans reduced the cost of financing affordable rental developments by approximately one-half of a percent, aligning lending costs more closely with Ginnie Mae-financed FHA-insured loans. The savings produced by FFB financing made projects feasible, improved affordability, and reduced risk. Unfortunately, the Administration opted to end the FFB option in 2019. FFB Risk-Sharing enables HFAs to finance the production and preservation thousands more affordable rental homes than would be possible without it.

Recommendation: HUD and Treasury should reinstate the Federal Financing Bank option for financing loans made by HFAs under the FHA-HFA Risk-Sharing program.

FHA-HFA Risk-Sharing Rule Revisions (24 CFR Part 266)

HUD issued a proposed rule in March 8, 2016, that would streamline this critical program, improving its functionality, better aligning it with current industry and HUD policies and practices, and providing greater flexibility for program participants. Issuing a final rule will reduce the administrative burden on both HUD and HFA staff by eliminating the need for constant waiver requests and processing and minimizing other special requests.

Recommendation: HUD should finalize rulemaking as soon as possible, and with minor modifications in keeping with NCSHA's comments when the proposed rule was published.

Mortgage Subordination

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.

Recommendation: HUD should allow state documents to be sufficient where present rather than imposing separate HUD requirements.

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 more than 25 years ago, HOME has successfully helped finance more than 1.29 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, $4.38 of private or other funding resources is invested in rental and homebuyer projects.

<u>Consolidated Plan and Related Planning Processes (24 CFR 91)</u>

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 the ConPlan have faced severe cuts. This has increased the administrative burden for HFAs and other grantees administering these programs.

Recommendation: HUD should issue an Advance Notice of Proposed Rulemaking inviting comments on how the ConPlan could be improved and simplified. This effort also should consider improvements to the Annual Action Plan (AAP) and Consolidated Annual Performance and Evaluation Report (CAPER) — with a special focus on reducing redundancies across planning documents. We also urge HUD headquarters to demand greater consistency among local HUD offices in how they interpret and implement ConPlans and related planning regulations and guidance.

<u>Repayment Requirements (24 CFR 92.252(e))</u>

The HOME repayment regulations go beyond statutory requirements by directing Participating Jurisdictions (PJs) to repay all HOME funds if at any point during the affordability period a 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.

Moreover, requiring the repayment of all invested HOME funds in a property if the property goes out of compliance at any point during the affordability period is a disincentive for undertaking certain types of development, which may have more risk associated with them. For example, deeply targeted developments, such as permanent supportive housing, may be riskier than developments that charge rents at or just below the HOME program rent limits. Therefore, the repayment requirement may act as a disincentive to finance priorities such as permanent supportive housing.

Recommendation: HUD should allow proration in HOME's repayment requirement in the regulatory section cited above. Proration would better align these programs 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.

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 (CHDOs). However, HOME regulations impose excessively strict and burdensome guidelines regarding CHDO qualifications.

Initial CHDO designation requires an organization 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, very few nonprofit developers are willing to jump through the hoops necessary to become a CHDO.

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 requirement has caused many active CHDOs to lose their CHDO designations.

Recommendation: HUD should amend the HOME regulations to simplify CHDO designation and annual update requirements, including removing the requirement for paid staff.

We also strongly encourage the Council to work with Congress to align the HOME program with the Housing Credit by replacing the CHDO set-aside with a nonprofit set-aside, as required in the Housing Credit program, and require material participation from nonprofits receiving HOME set-aside funding, as is required by nonprofits receiving Housing Credit allocations under that program's nonprofit set-aside. Treasury Regulations 469(h) set a standard for nonprofit material participation in Housing Credit developments, which could also be applied to nonprofit material participation under the HOME program. This will allow more nonprofit entities to qualify, reduce administrative burden, and better align HOME and the Housing Credit.

Property Standards (24 CFR 92.251)

HUD requires HOME 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.

Recommendation: HUD should 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). However, this standard makes it difficult to use HOME to assist in disaster recovery situations. Moreover, it is duplicative when applied to homebuyer activities, as such housing typically undergoes inspection by licensed home inspectors. Therefore, it is redundant to also require the PJ to also ensure the property meets MPS.

Recommendation: HUD should exempt emergency repair from MPS standards, allowing HOME to be a more efficient tool to use in disaster recovery situations. Furthermore, we recommend exempting HOME homebuyer activities from the MPS requirement.

Establishment of 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 (UAs) established by local Public Housing Authorities (PHAs). 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 annually to collect usage data from utility providers specific to their properties in order to adjust the properties' UA each year. After the owner has completed this analysis, it must be submitted to the PJ for review and approval. This HOME regulation also conflicts with regulations governing other HUD programs, as well as USDA rural housing programs. The benefits of the new UA determination requirement simply do not justify the burdens it imposes on property owners and PJs.

Recommendation: HUD should return to the 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. This requirement differs from the income verification requirements of other HUD and non-HUD affordable housing programs.

Recommendation: HUD should reduce this requirement to four to six consecutive pay stubs or third-party employment verification to align with Section 8 and Housing Credit policies.

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 protects survivors of domestic violence and other crimes from losing their housing assistance. Unfortunately, HUD's VAWA regulations require the PJ to approve an external transfer when a tenant seeks to move to another property to be safe.

Recommendation: HUD should expedite this process by allowing the building owner to approve external transfers rather than requiring action by the PJ. There is no need to also require the PJ to sign off, especially as the survivor's safety may require a speedy transfer.

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.

Recommendation: HUD should remove the ambiguous term 'features' from these sections.

Housing Trust Fund

Targeted mostly to extremely low-income households, the Housing Trust Fund (HTF) provides affordable housing and promotes independent living and self-sufficiency for our nation's poor families. With its administration entrusted to state agencies, HTF is part of the strong and proven state delivery system that also successfully administers other key housing programs, including HOME and the Housing Credit. Since 2016 when Fannie Mae and Freddie Mac first funded HTF, state grantees have completed 47 projects with 312 HTF units, leveraging $6 in public and private funds for every $1 in HTF.

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. Coordination and streamlining are especially important because HTF resources have been considerably less than HUD originally anticipated when it published the HTF interim rule in December 2015.

HTF Allocation Plans and Rehabilitation Standards (24 CFR 93.100)

Each HTF grantee must prepare an annual allocation plan showing how it will distribute HTF resources based on the priority housing needs identified in the state's ConPlan. While HTF has been operational for only four years, already the allocation plan process has proven to be cumbersome and often duplicative of other planning efforts. Further, certain aspects of the HTF allocation plan requirements are so burdensome they deter grantees from using HTF funds for specific purposes.

In particular, HTF requirements related to rehabilitation standards differ from other rehabilitation standards and have proven to be excessively complex for practical application. Due to this complexity, some grantees have opted not to include rehabilitation standards in their allocation plans, thus foregoing any rehabilitation activities with HTF.

Recommendation: HUD should streamline the allocation plan process, including sections related to the rehabilitation standards (Interim § 93.301). This would relax 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 a 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 statute requires states to select projects based, in part, on the duration of the affordability period.

Recommendation: HUD should eliminate the 30-year affordability requirement and instead allow 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.

Repayment Requirements (24 CFR 93.403)

The HTF program follows many of HOME's regulatory requirements, including the requirement that the grantee repay all funds invested in a property if at any point during the affordability period the property falls out of compliance with program rules, regardless of how long the development was in compliance. Similar to HOME, this serves as a disincentive for undertaking certain types of developments that may have more risk associated with them, including permanent supportive housing. This is exacerbated by HTF's lengthy 30-year affordability requirement.

Recommendation: HUD should include a proration in HTF's repayment requirement. Proration would better align HTF 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.

Income Targeting (24 CFR §§ 93.250–93.251)

The HTF statute requires that at least 75 percent of a grantee's HTF allocation be used to house extremely low-income (ELI) households. However, the Interim Rule restricts income targeting flexibility beyond the statutory requirement by mandating that the grantee use 100 percent of its HTF allocation to house ELI households if the total allocation is under $1 billion. This lack of flexibility has made it more difficult to use HTF in certain situations; for example, in rural areas where incomes are especially low and the market is limited, and for permanent supportive housing when some potential residents may have incomes slightly above the ELI threshold.

Recommendation: HUD should align the income targeting requirement with the statutory language, providing state grantees more flexibility.

Environmental Reviews (24 CFR §§ 93.301(f))

While the HTF statute does not include environmental requirements, HUD developed environmental provisions under the HTF Property Standards at 24 CFR § 93.301(f) for new construction and rehabilitation. HTF environmental standards differ from Part 58 environmental reviews, which state and local grantees must undertake under the HOME program. While some aspects of the HTF environmental standards are preferable to Part 58, there are also some significant drawbacks. Specifically, HTF environmental standards are too restrictive in terms of allowable activities. For example, HTF environmental standards do not allow for certain mitigation activities permitted under Part 58.

Furthermore, HTF environmental standards strictly prohibit new construction on farm lands (as defined by USDA). However, in some states, most undeveloped land is considered farm land by USDA; thus, HTF environmental standards severely limit new construction in these states.

Recommendation: HUD should replace the HTF environmental requirements with Part 58 reviews done by state and local governments, reformed and streamlined as suggested in the "Cross-Cutting Requirements" section below.

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 rents 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 conditions 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 HUD can 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. They are mission-driven entities devoted to the same affordable housing objectives as HUD. If HUD's solicitation does not impede them, HFAs are best-positioned to maximize program effectiveness in 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 that 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 for forwarding every RCS to state-certified appraisers, rather than just RCSs that need professional reviews, as they had done previously.

Recommendation: HUD should eliminate this new policy and allow PBCAs to perform most substantive reviews and forward RCSs to state-certified appraisers only if they deem it necessary.

<u>Mark-to-Market (Chapter 3 of the Section 8 Renewal Policy Guidebook)</u>

A Renewal guidebook requirement 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 Housing Credit use agreements, to be eligible for market-rate increases. 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 covers a limited number of situations and target populations.

Recommendation: HUD should eliminate this requirement, possibly including additional safeguards to ensure long-term preservation and capital investment in a property.

Section 8 Housing Choice Voucher Program

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

Recommendation: HUD should complete implementation of Sections 102, 103, and 104 of the Housing Opportunity Through Modernization Act (HOTMA), which was enacted in 2016. 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.

Section 811 Project Rental Assistance Program

Section 811 Project Rental Assistance (PRA) is an important program for addressing the affordable housing needs of low-income persons with disabilities. Unfortunately, HUD guidance on Section 811 PRA has proven to be excessively burdensome. As a result, some HFAs and property owners have been disinclined to participate in the program.

<u>Capital Program Requirements Applied to Section 811 PRA</u>

The Section 811 PRA regulations include onerous environmental provisions and Davis-Bacon Act requirements, which may be appropriate for capital programs that are used to finance the building or rehabilitation of housing but should not be applied to rental assistance such as Section 811 PRA. These requirements are a disincentive for private owners to participate and are unnecessary given the structure of the Section 811 PRA program.

Recommendation: HUD should remove regulatory requirements for environmental reviews and Davis-Bacon compliance, as these are inappropriately applied to Section 811 PRA and deter participation in the program.

<u>Regulatory Conflicts between Section 811 PRA and Other Programs</u>

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. For example, Housing Credit income eligibility is based on gross income, whereas the Section 811 PRA program uses adjusted income to determine eligibility. 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.

Recommendation: HUD should allow Section 811 PRA to conform to the requirements of PBRA, the Housing Credit, or whatever funding source is the dominant financing resource in the development.

<u>Recommendations on Cross-Cutting Requirements</u>

NCSHA encourages the White House Council to consider how cross-cutting federal requirements 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, Section 3 Requirements for Creating Opportunities for Low- and Very Low-Income Persons and Eligible Businesses, 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 costs.

Recommendation: HUD should raise the thresholds that trigger these cross-cutting requirements in certain circumstances, so resources subject to them can be used in smaller-scale projects without increasing costs.

For example, HUD should apply a larger dollar amount threshold for Section 3 projects to reduce compliance burden without significantly reducing the funds subject to Section 3. As NCSHA commented on the Section 3 proposed rule, a $400,000 threshold would "increase the number of recipients exempted from Section 3 requirements to 20 percent and only increase the amount of funding exempt from Section 3 coverage to 1.5 percent." We also recommend higher thresholds for Davis-Bacon and HUD's Lead Hazard Control and Healthy Homes programs.

National Environmental Policy Act Environmental Procedures (24 CFR 50; 58)

Every HUD-assisted project must be in compliance with the National Environmental Policy Act (NEPA). The environmental review process typically is conducted either by HUD (24 CFR 50) or delegated to a responsible entity, including a state HFA (24 CFR 58). However, these regulations require that the environmental review be conducted according to specific requirements associated with the particular funding source used to finance the property.

In cases where projects have multiple sources of funding, HUD or grantees must conduct multiple environmental reviews — one for each source of financing — adding to costs and extending development timelines. Part 58 environmental reviews are also time consuming because they require lengthy public comment periods. Moreover, until HUD approves the environmental reviews, project partners are prohibited from committing or spending any funding (see "choice-limiting actions," 24 CFR §§ 58.22). Unfortunately, HUD is not always timely in its approvals, creating expensive delays and bureaucratic friction.

Recommendation: HUD should reform environmental regulations by requiring only one environmental review per project, regardless of the financing sources. Streamline Part 58 reviews by reducing the 30-day public comment period to 15 days and removing restrictions on "choice-limiting actions."

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. This is because of the difficulty in accessing funding to remediate common areas.

Recommendation: HUD should allow units in townhomes and condominiums to receive assistance without requiring the evaluation and remediation of hazards in their common areas.

Information Technology Systems

HUD requires grantees and private owners to use several old and redundant information technology systems that are administratively burdensome and can disincentivize participation in HUD-assisted housing. The Tenant Rental Assistance Certification System (TRACS) and Enterprise Income Verification (EIV) system are examples of computer programs that are not user-friendly, require extensive training to use, and require a substantial investment in technology for any new users.

These systems have been particularly problematic for owners of Housing Credit properties who may wish to participate in the Section 811 PRA program. These owners generally have no familiarity with TRACS or EIV, as opposed to owners who have traditionally participated in older HUD legacy programs. These systems have become a disincentive for private owners' participation in the Section 811 PRA program.

Recommendation: HUD should improve its outdated information technology systems, including the Tenant Rental Assistance Certification System and Enterprise Income Verification systems. Further, HUD should evaluate the compliance burden of new data requirements in these systems.

Recommendations to the U.S. Department of Agriculture Rural Housing Service

Multi-Tiered Rents in RHS Properties

USDA's Rural Housing Service (RHS) regulations require that owners of RHS properties charge all tenants in a property the same rent. This policy is not consistent with other affordable housing programs, such as the Housing Credit, in which a state Housing Credit agency may incentivize an owner to target a portion of the units in a given property to extremely low-income tenants and charge lower rents for those units than the owner charges to other low-income tenants in units that are not as deeply targeted. The prohibition against "multi-tiered rents" in RHS properties can cause problems when an owner seeks to use the Housing Credit to preserve an RHS property. Moreover, it prevents RHS properties from using the recently enacted Housing Credit Average Income Test, which provides greater flexibility for both income targeting and rent levels in Housing Credit properties.

Recommendation: RHS should allow multi-rent tiering in RHS properties.

RHS Processing Times and Staffing Structure

RHS struggles to consistently process affordable multifamily housing preservation actions in cases of ownership transfer or control when the Housing Credit is used to preserve these properties. When such a transaction cannot be processed in a timely manner, it can hold up development and add to cost. The lack of timely processing is in part due to insufficient staffing at USDA, especially in certain offices, and in part due to USDA's staffing structure.

When Congress passed the Housing and Economic Recovery Act of 2008, it mandated that both HUD FHA Multifamily and USDA RHS improve their processing times for Housing Credit transactions. HUD was able to meet this requirement by creating specialized positions that only work on Housing Credit transactions with FHA Multifamily insured debt and establishing expedited processing timelines. However, USDA has not been able to achieve similar successes and would benefit from adopting a staffing structure and expedited timelines similar to those HUD uses.

USDA RHS also has delays in processing related to its single-family housing programs. For example, appraisals for USDA mortgages supporting mutual self-help housing program participants are often not completed in a timely manner.

Recommendation: USDA should create specialized positions that focus only on Housing Credit transactions and single-family housing programs, similar to the model HUD has employed.

Preservation of the RHS Rental Housing Portfolio

Multiple studies, including one NCSHA commissioned Abt Associates to conduct in 2018, have found that preservation efforts are often more cost effective than new production. Thus, in areas where affordable housing stock exists, ensuring that these properties remain viable and affordable is critical.

Maintaining RHS's sizeable portfolio of Section 515 multifamily housing and Section 514/516 farmworker rental housing is vital, and the Housing Credit is an essential tool for preservation of this inventory. While USDA has said it is in the process of risk-rating its portfolio and creating a typology to allow it to better target its preservation resources, there is little available public information about the USDA portfolio and its characteristics to allow Housing Credit stakeholders to identify priorities for preservation and engage owners who have maturing mortgages or may be prepaying.

Recommendation: USDA should provide publicly available data related to the property type and characteristics of the RHS portfolio so stakeholders can better strategize about how to best preserve these properties. USDA should also develop and release a draft multifamily preservation plan and allow stakeholders to comment.

Recommendation on Federal Disaster Recovery Programs

HFAs are playing leading roles in identifying and responding to the housing needs of their states' most vulnerable residents after natural disasters. As part of these efforts, HFAs and their sister state agencies are increasingly involved in using federal disaster recovery programs including HUD's Community Development Block Grant – Disaster Recovery (CDBG-DR) program. These are critical resources when disasters strike, but administrators often find the disaster recovery system to be unnecessarily complex, resulting in additional administrative expenses and delays in deploying resources to the most distressed citizens and communities.

Part of the problem is that there are multiple federal agencies responsible for federal disaster recovery programs, with limited to no coordination and no single point of responsibility to ensure the combined resources are being deployed effectively. Administrators also struggle to comply with ad-hoc regulations for CDBG-DR and other recovery programs that layer over each other and often times conflict and then are faced with penalties for administrative errors that may be overly harsh given the complexities of the circumstances. Finally, administrators are burdened by the lack of data sharing and information system coordination necessary for task management, review, and audit.

Recommendation: The White House should launch and convene a task force with representatives of both federal resource providers and major disaster recovery program users to develop processes and procedures that focus on increasing impact while reducing administrative burden. The task force should review and consider all statutes, policies, and practices governing disaster recovery programs run by HUD, USDA, the Environmental Protection Agency, Small Business Administration, Federal Emergency Management Agency, and the Departments of Treasury, Commerce, and Justice. The task force should identify ways to improve disaster recovery resource delivery, with a special focus on how to improve impact and reduce barriers for using disaster recovery funds to repair and rebuild affordable housing.

Federal housing programs are critical to the affordable housing work HFAs and other providers perform. However, targeted regulatory modifications would strengthen these programs by providing state and local administrators more flexibility, streamlining requirements, increasing efficiency, and expanding their reach. Further, regulatory changes would better align program rules to ease administration when properties rely on multiple sources of funding.

Thank you again for the opportunity to submit these proposals. Please let us know if we can do anything further to help you design and implement positive regulatory changes to federal housing programs.

Sincerely,

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives