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Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

RE: Docket No. FR-6320-A-01, Section 8 Project-Based Rental Assistance: Standard Program Regulation and Renewal Contract; Advance Notice of Proposed Rulemaking and Request for Public Comment

To Whom It May Concern:

On behalf of the undersigned members of the national Preservation Working Group (PWG), thank you for the opportunity to comment on HUD's Advanced Notice of Proposed Rulemaking on Standard Program Regulation and Renewal Contracts for Section 8 Project-Based Rental Assistance.

About the Preservation Working Group

PWG is a national coalition of housing owners, developers, advocates, tenant associations, state and local housing agencies, and others dedicated to the preservation of multifamily housing for low income families. PWG seeks to address threats to our nation's affordable housing stock – including expiring rental assistance, conversion to market rate use, deteriorating physical and financial conditions, increasing climate risk, and inequitable housing policies – and advance solutions to protect these homes and the people who live in them. In doing so, we seek to ensure that this housing remains safe, affordable, and accessible to low-income households into the future. We advocate for strong federal, state, and local program administration and increased resources, identify and disseminate best practices, and share information that protects, enhances, and preserves existing multifamily affordable rental homes to foster agency for residents.

Principles for Updating Renewal Regulations

As mission-driven affordable housing stakeholders, we value HUD's thoughtfulness in updating the Project-Based Rental Assistance (PBRA) renewal regulations and contracts. While we welcome the opportunity to streamline the agency's renewal process, we urge HUD to prioritize several principles:

- **Safeguard Key Aspects in PBRA Renewal:** HUD should safeguard key aspects and requirements of the PBRA program – including tenant rights and unlimited owner distributions of surplus cash – to strengthen preservation in any updated and consolidated PBRA renewal regulations and contracts, as outlined below.
- **Carefully Consider Inflexibilities of the Regulatory Framework:** HUD should carefully consider what is included in the regulatory framework versus what is incorporated into other program guidance, such as the Section 8 Renewal Guide, which provides more flexibilities for future updates.

- **Commit to a Streamlining Process that Limits Disruptions:** HUD should only move forward with streamlining the project-based Section 8 renewal regulations through a transparent and stakeholder-oriented process that limits disruptions for owners and residents.

Thank you for your consideration of our more specific responses below. We look forward to our continued partnership with HUD to enhance affordable housing across the country.

A. Reserve for Replacement

(1) To ensure project capital needs are met, HUD intends to require an owner to establish a HUD-controlled reserve for replacement account, with initial and annual deposits determined by means of a periodic capital needs assessment (CNA). Are there circumstances under which HUD should consider waiving the need for a CNA and, if so, what circumstances and why?

We strongly support the preservation of PBRA properties, including maintaining both their financial and physical health. A reserve for replacement account can be an important tool to defray the costs of replacing a project's capital items; however, certain requirements can be too burdensome or can conflict with existing third-party requirements (such as those from Fannie Mae or Freddie Mac-backed mortgages).

We urge HUD to streamline any reserve for replacement requirements within the regulatory framework, and to publish additional details in other program guidance rather than in regulation to preserve flexibility for implementation or future changes.

In addition, where a property is already subject to replacement reserve requirements through its lender, investor, or another third party, HUD should not impose additional requirements (including the requirement for HUD approval prior to reserve disbursements). In such cases, additional HUD requirements are likely to be redundant and would delay owners' ability to access funds to make repairs.

Further, if a property has a recognized party using an established, published process for requiring a reserve for replacement sized through periodic Capital Needs Assessments (CNAs), then HUD should refer to this CNA and not require another one, which can be costly and unnecessary. Where there is no other required reserve for replacement, HUD should ensure that CNAs are an eligible property expense and only required periodically. In general, we urge HUD to recognize CNAs as estimates and reduce barriers to accessing reserves for the ongoing preservation needs of a property.

In the event that HUD does introduce new or increased reserve requirements, it should be prepared to accommodate properties where property operations cannot support increased reserve deposits. A significant challenge in this area is that many properties most in need of increased capital investment are those with the least resources from which to fund such investment.

C. Project Finances

(6) Should the standard program regulation contain any limits on distributions? If not, how should HUD ensure that owners dedicate appropriate funds to operating and maintenance costs, and that taxpayer funds are not providing excessive compensation to owners?

MAHRAA was intended to incentivize Section 8 project owners to continue participation in the Section 8 program by allowing owners to receive comparable market rents for their units (and, in some instances, above market rents). The statute did not impose any restriction on surplus cash distributions – and, HUD’s Section 8 Renewal Guide expressly provides for the waiver of existing HUD limitations on distributions (see Renewal Guide, Section 2-12) that currently exist in many “new reg” HAP contracts.

The supply of affordable, assisted housing in most areas of the country is significantly below the level of demand/need. Also, in many markets, owners of assisted projects have significant financial incentives to convert their existing housing to a higher market level (or a different use) that will generate higher revenues and likely displace many lower income households.

Distributions are critical to both for-profit and non-profit Section 8 owners: The ability to get meaningful distributions provides an important incentive for owners to remain in the program; it also allows owners to reinvest in their portfolios in order to maintain – and, in many cases, improve – the quality of affordable housing and services provided to the tenants and the community. In these ways, distributions serve as a critical preservation tool.

The new/amended regulations and any new renewal HAP contract should continue to incentivize owners to renew their HAP contracts and preserve (and properly maintain) HAP-assisted, affordable housing. Further, as HUD works to establish a consolidated distributions policy for "old reg" and "new reg" renewals, we look forward to working with HUD to (i) identify reasonable guardrails around the process for owners to obtain unlimited distributions, and (ii) expand the types of properties and owners eligible for unlimited distributions (including non-profit participants) so that all owners can better reinvest in their properties and the services they provide.

D. HUD Enforcement

(7) In the interest of providing clarity and transparency, HUD believes it would be beneficial to include in the regulation a subpart on enforcement, where the tools available to HUD and the circumstances under which such tools could be employed would be addressed. Please comment.

The undersigned groups have consistently supported HUD’s efforts to prevent and resolve physical, financial or social distress in assisted multifamily properties. HUD currently has a robust set of asset management and enforcement tools, and we urge HUD to focus on the consistent application of the existing tools, including early problem identification and intervention.

Some enforcement rights do differ across different forms of the Section 8 HAP contract, and it would be valuable to bring all HAPs into conformity under the strongest language. Prior to amending regulations, HUD should work closely with the Preservation Working Group, resident advocates, and other stakeholders to improve asset management and enforcement processes based on continued development of best practices, and to evaluate the appropriateness of adding language within the regulatory framework versus within other guidance.

F. Scope

(10) HUD expects to incorporate into the regulation tenant rights equivalent to those that apply currently to tenants residing in projects assisted under RAD PBRA HAP contracts (as currently

described in Notice H 2019-09/PIH 2019-23). Should the regulation contain a subpart addressing tenant rights and responsibilities? If so, what specific topics should the subpart cover?

Residents of PBRA properties should have rights that are clearly protected in regulation, and we strongly support HUD's work to ensure safe and fair living conditions for residents. This includes, for example, the right to notices of changes in rents and utility allowances already codified in part 245, as well as standard notice requirements, which offer residents meaningful notice and the opportunity to comment on rehabilitation plans.

We look forward to working with HUD to clearly outline broadly-applicable tenant rights within the regulatory framework, and to incorporate further details into other guidance.

Again, thank you for the opportunity to comment on the Advance Notice of Proposed Rulemaking. Please direct any questions to Juliana Bilowich, Director of Housing Policy and Operations with LeadingAge (jbilowich@leadingage.org), or to Laura Abernathy, Senior Director of State and Local Policy with the National Housing Trust (labernathy@nhtinc.org). We look forward to our continued partnership.

Sincerely,

Bodaken & Associates

Community Economic Development Assistance Corporation

Housing Assistance Council

Housing Partnership Network

Klein Hornig LLP

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Local Initiatives Support Corporation (LISC) / National Equity Fund

National Council or State Housing Agencies

National Housing Trust

National NeighborWorks Association

Network for Oregon Affordable Housing

Novogradac & Company LLP

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The NHP Foundation