June 14, 2017

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410-0500

Re: Docket No. FR-6030-N-01

Housing Partnership Network appreciates the opportunity to comment on HUD's review of existing regulations to assess their compliance costs and reduce regulatory burden pursuant to Executive Order 13771 "Reducing Regulation and Controlling Regulatory Costs."

Housing Partnership Network is a business alliance of high-performing nonprofit affordable housing developers and lenders. The members' businesses include affordable housing development, lending, property management and housing counseling. HPN has 97 members in 50 states that collectively have developed and preserved 373,600 homes, and have served 9.8 million low-income people through housing, community facilities and services. Through HPN, the members' senior leadership comes together with their peers to exchange information, solve problems, and share best practices. Their collaborations have spawned member-owned businesses like a property insurance company and a Real Estate Investment Trust that advance innovations in the practice of affordable housing and community development.

HPN members develop both single family housing and multifamily housing and thus work with a broad array of HUD programs in combination with state and local funding. We understand the need for regulations to ensure that affordable housing is maintained in decent, safe condition and occupied by income-eligible tenants, but as layers of regulations, notices, and subregulatory guidance accumulate over time, they should be reevaluated to ensure that they are still needed. HPN's members have some specific Notices and regulations to suggest, but we would like to begin with two bigger picture suggestions:

203(b) and 203(k) for nonprofit developers

Our first recommendations is that it is time for HUD to reconsider FHA regulations and administration that are an impediment to nonprofit developers' use of the Section 203 (b) and 203 (k) loan guarantee programs. HPN members working in cities with large stocks of reasonably priced single family homes would like to access FHA financing to scale up their homeownership and single family rental efforts in neighborhoods that need access to capital. They have tried to use the FHA guarantee products but have struggled with inconsistent application of regulations and subregulatory guidance. Limits on 1.) how many loans one nonprofit can get guarantees on, and 2.) how many loans can be guaranteed in any one neighborhood stem are not understood and consistently communicated by HUD local offices, resulting in confusion for nonprofit developers and lack of access to FHA guarantees. The problem may not be the regulations themselves but rather administrative practice in local offices. In any case, high performing nonprofits with good track records can be effective partners to lenders and the FHA. Policies and practices should be looked at in light of current market conditions and performance of capable nonprofits. It's time for FHA to reevaluate its policies, procedures and regulations to make sure that loan guarantee products are meeting their potential to help strong nonprofits revitalize communities and increase homeownership.

Office of Rental Housing

A second, bigger picture issue to consider when looking at the need for regulatory streamlining at HUD is to consolidate the oversight of rental assistance programs in one office. HUD operates many rental assistance programs that are administered by different bureaucratic siloes, which then need to coordinate on program administration and regulations. Some of the differences among the rental assistance programs are obviously statutory and would need to be addressed by Congress. Many differences, however, grow out of the administrative structure, with some rental assistance programs administered by the Office of Public and Indian Housing, and others administered by the Office of Multifamily Housing at the Federal Housing Administration. For example, when the Family Self-Sufficiency program was expanded from vouchers and public housing to Project Based Rental Assistance (PBRA), it took nearly two years to get the Notice issued by HUD. This delay was because there is a different office administering PBRA than vouchers and public housing. The offices have different systems and payment software. Another example of the need for a simpler regulatory structure is the amount of bureaucratic coordination necessary for Rental Assistance Demonstration (RAD) transactions when projects need to secure replacement housing from different offices.

HUD should create an Office of Rental Housing and begin the process of streamlining and consolidating the functions involved with administering rental housing programs. There would be efficiency improvements if HUD did not have staff working on different payment systems, IT systems, and coordinating regulations affecting residents and landlords across siloes. Over time, moving to a system where public housing authorities, private owners of HUD-assisted properties, and other landlords are all subject to the same incentives and standards would enable HUD to evaluate which housing providers are doing the best job providing quality housing for residents. An Office of Rental Housing would improve efficiency and is a necessary first step toward a more effective system of performance management that gives families access to better choices in affordable housing.

HPN members also have specific issues with regulations and Notices in the following areas:

Nonprofit Distributions

HUD should repeal the existing regulatory ban on distributions to nonprofit owners of HUD-assisted properties (as set forth at 24 CFR Parts 880, 881, and 883). These regulations are not statutorily required, they arbitrarily disadvantage HUD's nonprofit partners relative to their for-profit peers, and they undermine nonprofit owners' capacity to advance HUD's aims. Unlike for-profits, nonprofits are required to reinvest any operating surplus to advance their charitable mission. Nonprofit owners typically rely on distributions of property cash flow to fund additional supportive services for residents; to support the operations of other less-viable affordable properties; or to fund new affordable housing development ventures. In recent years HUD has made some progress to correct this unbalanced treatment of distributions by modifying its Section 8 Renewal Guide to permit distributions to nonprofit-controlled owners in exchange for certain classes of long-term contract renewals, but current policy still prohibits distributions to nonprofit owners of original "new regulation" contracts, and to nonprofit owners who renew contracts under Option 4. If HUD chooses not to repeal the underlying regulations (cited above), it should amend the Renewal Guide to provide to nonprofit owners all distribution rights currently available to for-profits.

Streamlining Property Inspections

HUD should continue its process of ensuring that Real Estate Assessment Center (REAC) inspections focus on elements that are important to the health and safety of residents and on material physical issues and deferred capital needs. REAC inspections should avoid large penalties for relatively minor issues. We are concerned that the REAC Physical Condition Scoring Process as now in effect goes well beyond the "decent, safe and sanitary" mandate to incorporate "deficiencies" – like paint drips on functioning smoke detectors - which have no bearing on residents' safety or quality of life. The extension of HUD's physical inspection protocol to incorporate cosmetic issues introduces significant subjectivity which makes it impossible for owners to understand the standard to which a property may be held

Many owners, faced with these impacts, successfully appeal flawed inspections – a time-consuming process for the owner and for HUD. More fundamentally – the resulting REAC scores are not meaningful measures of assisted properties' performance relative to the "decent, safe and sanitary" standard, diminishing their value as a tool for managing the assisted stock. We urge HUD to revisit the REAC scoring rubric to refocus its physical inspections on the core "decent, safe and sanitary" mission by removing low-criticality, low-severity deficiencies from the inspection protocols.

In addition, a significant proportion of HUD-assisted properties are financed with, and regulated under, the Low Income Housing Tax Credit (LIHTC) program administered by state housing finance agencies. These properties are subject to redundant and inefficient double oversight during both the transaction phase and during their ongoing operations. For properties that have received tax credits or other state-administered capital programs, HUD should devolve responsibility to the appropriate state agency for 1.) underwriting and subsidy layering review, 2.) design/scope review, 3.) environmental review, and 4.) ongoing physical inspections. HUD should take on a higher level of oversight responsibility only when HUD determines an owner presents a higher risk because of problems with other properties or if a particular state agency is unable to carry out these responsibilities.

Beginning in 2010, an interagency effort identified a number of duplicative or sometimes inconsistent guidance for federal housing programs from HUD, USDA, and the Treasury Department. While some progress was achieved, we urge HUD to continue these efforts with particular regard to eliminating inconsistent or duplicative requirements among various HUD programs and between HUD programs and LIHTC.

Previous Participation and Transfers of Properties

HUD's Active Partners Performance System (APPS) and its review processes for Transfer of Physical Assets and Assignment of Section 8 Assistance are designed to ensure that only entities with appropriate capacity, resources, and experience will become owners of HUD-assisted properties, thereby minimizing the risk that these properties will be mismanaged and subject to either deterioration or fraud. While we strongly support HUD's efforts to ensure that only qualified owners are allowed to become HUD partners, HUD can minimize regulatory burden by eliminating or streamlining these reviews for existing successful participants, such as when properties are transferred between legal subsidiaries of an ownership entity that has demonstrated success in managing HUD-assisted properties.

For owners meeting defined criteria for balance sheet strength, portfolio scale, and compliance track record, HUD should 1.) replace transaction-level "previous participation" reviews in favor of a single annual review, 2.) streamline submission requirements for the TPA (asset transfer) and 8bb (subsidy contract transfer) processes; and 3.) streamline underwriting and scope/design reviews for FHA financing applications.

Emotional support animals in multifamily properties

FHEO Notice-2013-01 explains the obligations of housing providers with respect to animals that provide assistance to individuals with disabilities residing in their properties. The Notice is overly broad and should be clarified in some places. The Notice states that the housing provider "may ask persons who are seeking reasonable accommodation for an assistance animal that provides emotional support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one of more of the identified symptoms of effects an existing disability." The Notice does not require that the mental health professional has treated the individual in question. This should be clarified.

The Notice also states "While dogs are the most common type of assistance animal, other animals can also be assistance animals." Further in the Notice, it states "Breed, size and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct…" Managers of multifamily housing have to manage common spaces used by a variety of residents and thus have to balance different needs. The standard in this Notice puts too heavy a burden on the housing provider and can be abused. HUD should revise the Notice in light of the practicalities of managing apartments with many residents.

FSS Escrow Calculation for Low Income Households:

HUD should strengthen the Family Self Sufficiency (FSS) program's work incentive by eliminating the existing cap on monthly escrow contributions for participant households above 50% AMI. This is not required by statute and it undermines the program's incentive to increase resident earnings growth. Normally, HUD rental assistance pays the difference between the cost of rent and what a household can afford (defined as 30% of income), and so as earnings grow, housing assistance shrinks. FSS is designed to correct this earnings disincentive by allowing a participating household to save rent increases attributable to earnings growth in a special escrow account, the savings from which can be accessed for long-term financial goals like homeownership or education. In this way, FSS turns a disincentive into a powerful positive incentive for employment and earnings.

However, under current program regulations, escrow contributions are capped once an FSS participant's income exceeds 50% AMI (see 24 CFR 984.305 (b)(1)(ii)), despite that the FSS authorizing statute provides discretion for HUD to continue escrowing for earnings growth up to 80% of AMI (see 42 USC 1437u(d)(1),"[…]The Secretary shall provide for increased rents for participating families whose incomes are between 50 and 80 percent of the area median income, so that any family whose income increases to 80 percent or more of the area median income pays 30 percent of the family's monthly adjusted income for rent.") Given that 50% of AMI is not a "self-sufficient" wage in most parts of the country, we urge HUD to use its authority to allow FSS participants to escrow earnings growth up to 80% AMI, which should enable many more participants to attain a truly self-sufficient income level, and to escrow sufficient savings to support a transition into the private housing market.

Thank you for your consideration of these suggestions. If you have any questions, please contact me at siglin@housingpartnership.net.

Sincerely,

Kristin Siglin

Senior Vice President, Policy